Judge Swayne

9 Otto p. 467
Oct. 3. 1878

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 780.

WILLIAM McBURNEY AND THOMAS R. McGHAN,
APPELLANTS,

vs.

CAROLINE CARSON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

FILED SEPTEMBER 19, 1878.

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THE UNITED STATES OF AMERICA,
District of South Carolina, to wit:

No. 1.] At a circuit court of the United States for the sixth circuit in and for the district of South Carolina, begun and holden at Columbia, in the district aforesaid, on the fourth Monday in November, 1866, before the judges of the said United States for the district of South Carolina, holding said circuit court according to the form of the act of Congress in such cases made and provided, the following proceedings were had:

CAROLINE CARSON, COMPLAINANT,
vs.
ALEXANDER ROBERTSON, JOHN FREER Blacklock, William McBurney, Elias N. Ball, William J. Ball, William Carson, James P. Carson, defendants.

Be it remembered that heretofore, to wit, on the 11th day of August, in the year of our Lord one thousand eight hundred and sixty-six, the said Caroline Carson, a citizen of the State of New York, impleaded the said Alexander Robertson, John Freer Blacklock, William McBurney, Elias N. Ball, William J. Ball, William Carson, and James P. Carson, in a bill for account and relief as follows:

No. 2.] *Bill.*

In equity.

UNITED STATES OF AMERICA,
District of South Carolina, Sixth Circuit:

To the judges of the circuit court of the United States for the district of South Carolina, sitting in equity:

Caroline Carson, of the city of New York, and a citizen of the State of New York, brings this her bill against Alexander Robertson, John Freer Blacklock, William McBurney, Elias Nonus Ball, all of the city of Charleston, and citizens of the State of South Carolina; and William Ball of St. Johns Parish, a citizen of the State of South Carolina, and William Carson and James Petigru Carson, both of the city of New York, and citizens of the State of New York.

And, thereupon, your oratrix complains and says, that her late husband, William A. Carson, of the parish of St. Johns Berkley, of Charleston district, in the State of South Carolina, having a very large amount of real and personal property, did, on or about the 11th day of March, in the year of our Lord one thousand eight hundred and fifty-four (1854), duly make, sign and publish his last will and testiment in writing, and did thereby specifically bequeath to your oratrix and her two sons, the said defendants, William Car-

son and James Petigru Carson, various articles of his personal property, and did also further devise and bequeath thereby as follows:

"I order and direct my executors, or such one as may qualify hereon, to sell all the rest of my estate, real and personal, soon after my death, and upon such terms as he or they may deem most judicious. Until such sale takes place, I order my executors to apply so much of the income of my estate to the maintainance of my wife and children, and the education of the latter, as they or he, in their discretion, may deem fit and proper. From the balance of the income until the sale, and from the proceeds of sale, I order and direct my debts to be paid, and then the residue of the purchase money to be divided into three equal parts and held by my executors, or qualified executor, in trust for the following purposes:

"First. To pay the interest arising from one-third part thereof to my wife, Caroline Carson, for and during the term of her natural life; and the legacy and provision herein made for her shall be in lieu and bar of dower and every other claim she may set up upon my estate.

"Second. To pay and apply the interest arising from another third part thereof to the maintenance, education and support [of] my son, William Carson, during his minority, if they deem so much necessary, and upon his attaining the age of twenty-one years, the capital and principal thereof and its accumulations, if any, to be paid over to him absolutely.

"And third. To pay and apply the interest arising from the remaining third part thereof to the maintenance, education and support of my son, James Petigru Carson, during his minority, if they deem so much necessary, and upon his attaining the age of twenty-one years, the capital or principal thereof and its accumulations, if any, to be paid over to him absolutely.

"Item.—I give, devise and bequeath all the rest and residue of my estate, including the aforesaid third part, after my wife's death, to my two sons, William Carson and James Petigru Carson, or the survivor of them, should either die under the age of twenty-one years.

"Item.—I nominate, constitute and appoint my friends, Alexander Robertson and John Freer Blacklock, executors of this, my last will and testament, and testimentary guardian of my children."

All of which said devises, bequests, directions and appointments will more fully appear on reference to the copy of the said will hereunto annexed and marked Exhibit A.

And your oratrix further sheweth that her husband, the said William A. Carson, died on or about the 17th day of August, in the year of our Lord one thousand eight hundred and fifty-six, leaving his aforesaid will in full force; that the said will was duly proven in the court of ordinary for Charleston district of the State of South Carolina, by the said Alexander Robertson and John Freer Blacklock, who took upon themselves the execution thereof and entered upon the real estate of the said William A. Carson and possessed themselves of all his personal property, and among other things, of

the wines and silver-plate of the said William A. Carson; that the said Alexander Robertson and John Freer Blacklock, as executors aforesaid, sold the greater part of the real and personal property of the said testator, and having paid his debts and settled their accounts as executors as aforesaid, previously to the year of our Lord one thousand eight hundred and sixty-one, and having received for such services as executors, a sum not [less] than ten thousand dollars ($10,000) out of the estate of the said testator, invested the balance of the proceeds of the sale in various lawful securities, and held the said securities and the rest of the estate of the said testator, after the aforesaid settlement made by them in their character of executors, as trustees under the aforesaid will, for the benefit of your oratrix and her infant sons, according to the trusts of the said will as hereinbefore set forth.

And your oratrix sheweth that, as she is informed and believes, the said Alexander Robertson and John Freer Blacklock, among other sales made by them as executors, did, towards the close of the year of our Lord one thousand eight hundred and fifty-six (1856), sell to the aforesaid Elias Nonus Ball, a valuable plantation belonging to the estate of the said testator, known as "Dean Hall," and situated in Charleston district, of the State of South Carolina, and then received therefore the bond of the said Elias Nonus Ball, conditional for the payment to them of a large sum of good and lawful money, which bond the said Elias Nonus Ball secured by a mortgage to the said Alexander Robertson and John Freer Blacklock of the said "Dean Hall;" that the said Alexander Robertson and John Freer Blacklock, as executors, sold a large part of the personal property of the estate of the said William A. Carson to the said Elias Nonus Ball, and then received therefor the joint and several bond of the said Elias Nonus Ball and the said William Ball, conditioned for the payment to them, the said executors, of a large sum of good and lawful money; and that the said bonds constituted a large part of the securities held by the said Alexander Robertson and John Freer Blacklock, as trustees aforesaid, for the benefit of your oratrix and her infant sons, after the aforesaid settlement, as executors, and previously [to] the year of our Lord one thousand eight hundred and sixty-one (1861).

And your oratrix showeth that, as she is informed and believes, the said William McBurney, at some time in April, of the year of our Lord one thousand eight hundred and sixty-three, (1863) being desirous of purchasing from the said Elias Nonus Ball the said "Dean Hall," for certain illegal promissory notes issued in violation of the Constitution of the United States, advanced a large number of such notes to the said Elias Nonus Ball, to enable him to obtain by means of the said notes, from the said Alexander Robertson and John Freer Blacklock, a release of the aforesaid bond, and satisfaction of the aforesaid mortgage of "Dean Hall," securing the same; that thereupon the said Alexander Robertson and John Freer Blacklock, trustees as aforesaid, accepted the said notes in payment of the said bond of the said Elias Nonus Ball, given by him to the said Alex-

ander Robertson and John Freer Blacklock to secure the purchase money of the said "Dean Hall;" that the said Alexander Robertson and John Freer Blacklock, thereupon released the said bond and entered satisfaction, or agreed to enter satisfaction upon the aforesaid mortgage of "Dean Hall," securing the said bond in consideration of the said illegal notes; and that thereupon the said Elias Nonus Ball, in consideration of the said illegal notes, advanced or paid to him as aforesaid, by the said William McBurney, the said Dean Hall plantation did convey to the said William McBurney.

And your oratrix further showeth, that the said Alexander Robertson and John Freer Blacklock, trustees as aforesaid, in consideration of certain other said illegal notes received by them, from the said Elias Nonus Ball and William Ball, released to the said Elias Nonus Ball and William Ball, the aforesaid joint and several bond of the said Elias Nonus Ball and William Ball, held as hereinbefore stated, by the said trustees for the benefit of your oratrix, and for her infant sons.

And your oratrix further showeth that she is the Caroline Carson named as legatee in the said will of her husband, the said testator, and is and always has been willing and ready to accept the provision made for her in the said will, in lieu of any claim she may have on the estate of the said testator; that her sons, the said William Carson and James Petigru Carson, having attained the age of twenty-one years, and being citizens of New York, assigned to your oratrix all their right, title and interest under the said will of the said testator, as will more fully appear from the copies of the said assignments hereto annexed, and marked Exhibits "B" & "C," of which assignments the said Alexander Robertson and John Freer Blacklock have had notice; that by virtue of the said will and the said assignments, your oratrix is entitled to receive all the property held by the said Alexander Robertson and John Freer Blacklock, as trustees under the said will.

And your oratrix further showeth that, for more than five years, the said Alexander Robertson and John Freer Blacklock, trustees as aforesaid, have not paid to her any portion of the income to which she is entitled under the aforesaid will of the said testator, and, with the exception of certain small sums of illegal notes, from time to time paid to her son, James Petigru Carson, then a minor, have paid nothing for the maintenance, education, or support of her sons, the said William Carson and James Petigru Carson; that, before the date of the above mentioned assignments, your oratrix, both in her own right and as guardian of her said sons, and her two sons, repeatedly requested the said Alexander Robertson and John Freer Blacklock to account with them as trustees as aforesaid, and to pay to them the amount found due upon such account; that since the above assignments, your oratrix both as legatee and assignee has repeatedly requested the said Alexander Robertson and John Freer Blacklock, trustees as aforesaid, to account with your oratrix, and to pay to her the amount due to her, or to transfer to her the property to which she is entitled, under the will of the said William A. Car-

son; that your oratrix has been the more urgent in such requests of late, because she is informed and believes that, since the death of her said husband, he, the said Alexander Robertson, has become utterly insolvent, and the said John Freer Blacklock very much embarrassed in his pecuniary affairs. That the said Alexander Robertson and John Freer Blacklock, trustees as aforesaid, have nevertheless utterly refused so to do, and have refused to transfer to your oratrix any portion of the said property, or to pay to your oratrix any moneys to which she may be entitled, either as legatee or assignee, either as principal of the said estate of the said William A. Carson or as interest thereon, though the said trustees are actually receiving such interest, or to make any provision for the maintenance or support of your oratrix or her sons. In consequence of which conduct of the said Alexander Robertson and John Freer Blacklock, trustees as aforesaid, your oratrix, though entitled to a liberal support and maintenance under the will of the said William A. Carson, is left entirely destitute, and being in bad health is barely able to support herself by her own labor.

And they, the said John Freer Blacklock and Alexander Robertson, trustees as aforesaid, though admitting to your oratrix, in general terms, their indebtedness to her, pretend that they are bound to pay over to her only about eight thousand dollars, and only upon condition that your oratrix release to them all claims which she may have under the*y* will of the said William A. Carson, but your oratrix chargeth that such pretence is contrary to justice, and the rules of equity administered by this honorable court. And that the said Alexander Robertson and John Freer Blacklock, trustees as aforesaid, should without delay, and without exacting conditions from your oratrix, pay over to her the amount due to her, and that such amount is about eighty thousand dollars, (80,000). And the said Alexander Robertson and John Freer Blacklock at other times pretend that, in settlement of their indebtedness to your oratrix, they are entitled to pay to your oratrix the illegal promissory notes and bonds of an unrecognized government, which notes and bonds had been issued in violation of the Constitution of the United States, and are now utterly valueless; whereas, your oratrix chargeth the said Alexander Robertson and John Freer Blacklock, trustees as aforesaid, could, in their character of trustees as aforesaid, only receive good and lawful money, and invest the same in good and lawful securities, and that they cannot account to your oratrix in illegal bonds and notes, issued in violation of the Constitution of the United States; and the said Alexander Robertson and John Freer Blacklock, trustees as aforesaid, sometimes pretend that they had full authority, under the will of the said William A. Carson, to change the investments they held as such trustees; whereaas your oratrix charges that the said trustees had no right, by virtue of any power conferred upon them in the will of the said William A. Carson, to change good and lawful securities for others of doubtful value and illegal character, and that having done so they are in equity bound to account in good and lawful money to your oratrix for the said good and lawful se-

curities so improperly changed by them, and that the title to such securities is not changed by such wrongful act of the said trustees, and that such securities must, in the will of the said William A. Carson. And your oratrix chargeth that the said Elias Nonus Ball, having procured his aforesaid bond, given to the said trustees and secured by his aforesaid mortgage of "Dean Hall," to be released and satisfaction to be entered on his said mortgage as aforesaid, in consideration of the said illegal notes, with full notice that the said bond and mortgage were held by the said Alexander Robertson and John Freer Blacklock, as trustees for the benefit of your oratrix, then living in the State of New York, and her infant sons, can derive no advantage from the said discharge and release, but must account therefor to your oratrix; and your oratrix chargeth that, the said William McBurney, having purchased Dean Hall plantation from the said Elias Nonus Ball, for the said illegal notes, with full knowledge, that the aforesaid mortgage thereon had been held by the said Alexander Robertson and John Freer Blacklock, as trustees, for the benefit of your oratrix, then absent as aforesaid, and her infant sons, and had been satisfied or agreed to be satisfied by the said trustees for the said illegal notes, transferred to them by the said Elias Nonus Ball, and having aided the said Elias Nonus Ball to procure such satisfaction, cannot hold the said Dean Hall plantation discharged of said mortgage; and your oratrix further chargeth that, the said Elias Nonus Ball and William Ball having procured their aforesaid joint and several bond to be released by the said Alexander Robertson and John Freer Blacklock, trustees aforesaid, in consideration of the said illegal notes, and with full knowledge and notice that the said bond was held by the said trustees, for the benefit of your oratrix, then living in the State of New York, and her infant sons, can take no benefit from such release, and are in equity bound to account to your oratrix for the said bond.

In tender consideration whereof, and to the end that all the said defendants may, upon their respective corporal oaths, full, true and perfect answer make to all and singular the matters hereinbefore set forth, as particularly as if they were thereto specially interrogated; and that the said Alexander Robertson and John Freer Blacklock may show what disposition they have made of the wines and silver plate belonging to the estate of the said William A. Carson; and that the said Alexander Robertson and John Freer Blacklock, may show at what precise time they both and each of them, entered satisfaction on the said mortgage they held on Dean Hall plantation, and by what authority they so entered satisfaction, and released the the bonds of the said William Ball and Elias Nonus Ball; that in case the said Alexander Robertson and John Freer Blacklock have not entered satisfaction on the said mortgage, they may be enjoined from so doing; and that the said Alexander Robertson and John Freer Blacklock may answer whether they have not refused to account with your oratrix, and to pay to her the amount due to her, and have alleged as their reason for so doing, that they are entitled to a general release from your oratrix of all claims she may have

against them, or either of them, as trustees, as a precedent condition of their so accounting; and that the said Alexander Robertson and John Freer Blacklock may be ordered to account fully with your oratrix in the premises, and to pay over the amount due to her; and that the said Elias Nonus Ball may be ordered to deliver up the said bond, given for the purchase money of "Dean Hall," and the said mortgage deed given by him to secure the said bond, and may be decreed to pay the amount due upon the said bond; and, that the said Elias Nonus Ball and William Ball may be ordered to deliver up their aforesaid joint and several bond, and be decreed to pay the amount due thereon; and that the said Dean Hall plantation be declared subject to the said lien of the beforementioned mortgage thereof, and that the said mortgage be foreclosed, and that in the meantime, the said William McBurney be enjoined from conveying the said "Dean Hall," and from committing waste thereon.

May it please your honors to grant to your oratrix, not only writs of injunction enjoining the said Alexander Robertson and John Freer Blacklock, and William McBurney in the premises, but also a writ or writs of subpœna, directed to the said Alexander Robertson, John Freer Blacklock, Elias Nonus Ball, William McBurney, William Ball, William Carson and James Petigru Carson, commanding them, under a certain pain and upon a certain day therein named, to appear before your honors in this honorable court, then and there to answer all and singular the premises, and to them abide, and perform such orders and decrees as to your honors shall seem meet.

And your oratrix will ever pray.

JAMES LOWNDES,
Compl't's Solicit'r.

(Endorsed:) Filed 11 August, 1866. Substituted for original bill of this date on the 14 Dec'b'r, 1866.

No. 3.] *Subpœna.*

FIFTH CIRCUIT OF THE UNITED STATES OF AMERICA,
District of South Carolina:

To Alexander Robertson, John Freer Blacklock, Elias Nonus Ball, William Ball, William McBurney, citizens of the State of South Carolina, and William Carson and James P. Carson, citizens of the State of New York:

You are hereby strictly commanded and firmly enjoined, that all manner of excuses being laid aside, you personally be and appear before the clerk of the circuit court of the United States of America, for the aforesaid district circuit at the rules to be holden in Charleston, in the aforesaid district, on the first Monday in September next, then and there true and perfect answer to make upon your corporal oath on the Holy Evangelists, to all such matters as shall be objected against you in the bill of complaint of Caroline Carson, a citizen of the State of New York.

And, also, that you do, on the rule day next succeeding the day appointed and expressed for your appearance, file, or cause to be filed, in the clerk's office of the said court, your plea, answer or demurrer to the said bill of complaint.

Hereof fail not, under the pain of one hundred pounds.

Given under the seal of the said court.

Witness Salmon P. Chase, Chief Justice of the United States of America, at Charleston, in South Carolina, district aforesaid, this eleventh day of August, in the year of our Lord one thousand eight hundred and sixty-six, and in the 91st year of the sovereignty and independence of the United States of America.

JAMES LOWNDES,
JAMES CONNER,
Compl't's Solicitors.

MEMORANDUM.—The defendants are to enter their appearance in this suit in the clerk's office aforesaid, on or before the day at which [the] subpœna is returnable; otherwise the bill will be taken *pro confesso* against them.

No. 4.] *Return of service.*

U. S. MARSHAL'S OFFICE,
South Carolina District.

I hereby depute B. G. Pringle to execute the within process for William McBurney.

August 11th, 1866.

J. P. M. EPPING,
U. S. Marshal.

I executed the within process by leaving a copy on William McBurney, esq., at 37 Hayns street.

Charleston, August 14th, 1866.

B. GARDEN PRINGLE.

Service proved this 11th Aug., 1866.

V. I. TOBIAS,
Notary Public.

N. E. J. as to John F. Blacklock, Elias N. Ball, James P. Carson, William Carson, Alex. Robertson, Wm. Ball.

We acknowledge service of this writ for William J. Ball, defendant.

Nov. 11, 1866.

SIMONS & SIMONS.

I accept service for John F. Blacklock, def't, this 25th Oct., 1866.

H. E. YOUNG.

Filed 21st Nov'b'r, 1866.

I accept service for Alexander Robertson, def't, this 19th Nov'b'r, 1866.

B. H. RUTLEDGE, *Sol'r.*

Filed 21 Nov'b'r, 1866.

And on the 4th day of March, A. D. 1867, came into court the defendant, William McBurney, by his solicitors, McCready & Son, and filed the following demurrer, which demurrer is in the words and tenor following:

Demurrer.

In equity.

THE UNITED STATES OF AMERICA,
Sixth Circuit, District of South Carolina:

The demurrer of William McBurney, one of the defendants to the bill of complaint of Caroline Carson.

This defendant, by protestations, not acknowledging or confessing all or any of the matters and things in the said complainant's bill contained to be true, in such manner and form as the same are therein and thereby set forth, doth demur thereto, and for cause of demurrer saith that the said bill doth not contain sufficient matter of equity whereupon this honorable court can ground any decree in favor of the said complainant, or give the said complainant any relief against this defenant, and therefore, and for other defects and divers other causes of demurrer appearing in the complainant's said bill, this defendant doth demur thereto, and humbly demands the judgment of this honorable court, whether he shall be compelled to make any answer to the said bill; and prays to be dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

McCREADY & SON,
Def't's Sol'rs

No. 6.] *Attorney's certificate.*

We hereby certify that, in our opinion, the above demurrer in this case is well founded in point of law.

McCREADY & SON, *Counsel.*

Filed 4 March, 1867.

Affidavit.

THE UNITED STATES OF AMERICA,
Sixth Circuit, District of South Carolina:

Personally appeared before me, William McBurney, the defendant above named, who, being duly sworn, saith the demurrer above is not interposed for the purpose of delay.

WM. McBURNEY.

Sworn to before me this 4th day of March, 1867.

DANL. HORLBECK,
C. & Com. U. S. for So. Ca.

And on the 4th day of March, A. D. 1867, came into court the defendant, Wm. J. Ball, by his solicitors, Simons & Simons, and filed the following demurrer, which demurrer is in the words and tenor following:

No. 8.] *Demurrer.*

In the circuit court. In equity.

UNITED STATES OF AMERICA,
South Carolina District:

The seperate demurrer of William J. Ball, a citizen of the State of South Carolina, one of the defendants, who is jointly impleaded with Alexander Robertson, John Freer Blacklock, William McBurney, Elias Nonus Ball, William Carson and James P. Carson, to the bill of complaint of Caroline Carson, a citizen of New York.

This defendant, by protestation, not confessing or acknowledging all or any of the matters in and by the said bill set forth and complained of to be true, in manner and form as they are therein and thereby set forth and alleged, says he is advised there is no matter or thing in the complainant's said bill of complaint contained good and sufficient in law to call the defendant to account in this honorable court for the same, and that there is good cause of demurrer thereto, and he does demur thereto accordingly, and for cause of demurrer says that the complainant's said bill of complaint, in case the same are true, which this defendant in no wise admits, contains not any matter of equity wherein this court can ground any decree or give the complainants any relief or assistance as against this defendant, wherefrom and for divers other errors and defects in complainant's said bill of complaint contained, and appearing on the face thereof, this defendant does, as aforesaid, demur in law thereto, and humbly prays the judgment of this honorable court, whether he is compellable or ought to make any answer thereunto otherwise than as aforesaid; and this defendant prays to be hence dismissed with his costs and charges in this behalf sustained.

SIMONS & SIMONS.
Def'ts' Sol'rs.

Filed 4th March, 1867.

And on the 4th day of March, A. D. 1867, came into court the defendant, William McBurney, by his solicitors, McCready & Son, and filed the following answer, which answer is in the words and tenor following:

Answer.

In equity.

THE UNITED STATES OF AMERICA,
Sixth Circuit, District of South Carolina:

The seperate answer of William McBurney, one of the defendants, a citizen of South Carolina, to the bill of complaint of Caroline Carson, a citizen of the State of New York:

This defendant, now and all times hereafter, saving and reserving to himself all benefits and advantages of exception to the manifold errors, uncertainties and insufficiencies of complainant's said bill of complaint, for answer thereto, or to so much thereof as he is advised it is material or necessary for him to answer unto, answering, says that he admits that the late William A. Carson, mentioned in the said bill, did make his last will and testiment, bearing the date in the said bill mentioned, in which, after certain legacies mentioned in the said bill, he ordered and directed his executors, or such one as might qualify thereon, to sell all the rest of the estate, real and personal, as soon after his death and upon such terms as he or they might deem most judicious, with such other directions and provisions as are recited in the said bill, and thereof appointed this defendant's co-defendants, Alexander Robertson and John Freer Blacklock, executors.

And this defendant, further answering, also admits, that the said William A. Carson died on or about the day and year mentioned in the said bill, leaving his will in force; that the said will was duly proved before the ordinary for Charleston district, in the State of South Carolina, by the said executors named therein, who took upon themselves the execution thereof; but he knows nothing of the general conduct of the said executors in reference to their management of the estate of their testator.

And this defendant, further answering, admits that the said executors of the said testator did, on or about the second day of February, in the year of our Lord one thousand eight hundred and fifty seven, sell and convey to Elias Nonus Ball a plantation in St Johns. Parish, known as "Dean Hall," and, for part of the purchase-money thereof, took the bonds of the said purchaser to themselves as such executors, conditioned altogether for the payment of thirty-five thousand dollars, and, to secure the same, took a mortgage of the said plantation also to themselves as such executors, which bonds and mortgages bore the same date as the said conveyance.

And this defendant further answering, says he cannot admit that the said Elias Nonus Ball sold to him, (this defendant) the plantation called "Dean Hall," because the same is not true; but as he is ready to answer fully to the said allegations, he says the truth is thus: That, in the month of December, A. D. 1862, the mercantile firm of Hyatt, McBurney & Co., whereof Edmund Hyatt, a citizen of the State of New York, this defendant, William Hasseltine, Al-

fred L. Gillespie and Thomas R. McGahn, then citizens of the State of South Carolina, were the members and partners, having a large amount of cotton on hand, and being unable by reason of the war then raging, and the blockade of the port of Charleston, to carry on their business as dry-goods merchants, were willing to change some of their investments into real estate until peace should be restored. And in consideration and at the suggestion of William Whaley, esquire, who was the[n] cultivating the said plantation "Dean Hall" upon some contract with the said Elias Nonus Ball, that the said plantation might be purchased at a fair price, and his recommendation of the purchase, upon consultation with the other parties of the said firm of Hyatt, McBurney & Co., this defendant authorized the said William Whaley to treat for the purchase of the said plantation, which treaty finally brought the said Elias Nonus Ball and the said Hyatt, McBurney & Co., to a contract of sale and purchase some time in the month of March, A. D. 1863, respecting the said plantation at the price of one hundred thousand dollars cash; that, upon this treaty, the late James L Petigru, esquire, (as this defendant has understood and believes and hopes to prove), who was then and always had been, the legal adviser of the said executors of the said William A. Carson, who was the father of the complainant, and grandfather of this defendant's co-defendants, William Carson and James Carson, was not only informed, but consulted by the said executors or one of them, and not only approved, but urged the completion of the said treaty and contract, with the express and avowed purpose of having the bonds and mortgage of the said Elias Nonus Ball to the said executors of the said William A. Carson paid off and satisfied of the purchase money; that under these circumstances, this defendant and his copartners had good reason to believe, and did believe, that the said contract of purchase was fair and equal, and that they hoped would prove advantageous to both parties to the contract; that in pursuance of the said contract the said Hyatt, McBurney & Co., as soon as the title to the said plantation had been examined and approved by their solicitor, and before the conveyance hereinafter mentioned was made and executed, on or about the 23d day of April, in the year last aforesaid paid on account of the purchase-money to the said Elias Nonus Ball more than eighty thousand dollars to enable him to pay off his bonds to the said executors of the said William A. Carson, and satisfy the said mortgage thereon; and that the said Elias Nonus Ball afterward, in and by his certain deed-poll bearing date the seventh day of May, in the year last aforesaid, for and in consideration of the said sum of one hundred thousand dollars therein written and expressed, conveyed the said plantation to this defendant and Alfred L. Gillespie, one of his partners, to have and to hold the said plantation unto this defendant, and the said Alfred L. Gillespie, and the survivors of them, and the heirs and assigns of such survivor, forever; but to and for such uses, intents, and purposes as they, the said William McBurney and Alfred L. Gillespie, or the survivor of them shall, by any deed in writing, duly signed by them or him, in presence of two

witnesses, from time to time limit, direct and appoint, and until such limitation, direction, or appointment, to the only proper use and behoof of Edmund Hyatt, William Hasseltine, Thomas R. McGahn, and the said William McBurney and Alfred L. Gillespie, their respective heirs and assigns in such shares, interest, and porportions as they are now entitled to in the capital and profits of the present copartnership of Hyatt, McBurney & Co., contained the usual clause of warrantry, and which said deed was immediately, that is to say on the day next after the date thereof, duly recorded in the office of the register mesne conveyance for the district of Charleston, in the State of South Carolina; all of which will fully appear upon reference to the said original deed now in this defendant's hands ready to be produced; and he craves leave to refer to the same as often as may be necessary in the progress of this cause.

And this defendant further answering, says that the said copartnership of Hyatt, McBurney & Co., being about to expire, that is to say on the 31st day of May last, aforesaid, the said Edmund Hyatt, between the purchase of the said plantation and the conveyance hereinbefore mentioned, sold his interest in the said copartnership property, and assetts to this defendant and the other copartners, and in and by his certain deed of release, bearing date the 8th day of May, A. D. last aforesaid, (1863). released his interest in the said plantation, so that the said interest should enure to the only proper use and behoof of this defendant, William Hasseltine, Alfred L. Gillespie and Thomas R. McGahn, their respective heirs and assigns, in such shares, interests, and proportions as they lately had as copartners in the capital and profits of the late copartnership of Hyatt, McBurney & Co., which deed was very soon after, to wit, on the fifteenth day of the month and year last mentioned, recorded in the office of the register mesne conveyance for the district and State aforesaid, as will fully appear upon reference to the said deed in this defendant's hands, ready to be produced, and to which he craves leave to refer as he may have occasion. And therefore, to secure a bond of the other partners to the said Edmund Hyatt, conditioned for the payment of forty thousand dollars, given for the purchase of his interest in the said firm of Hyatt, McBurney & Co., this defendant, and the said Alfred L. Gillespie, by their deed, signed in the presence of two witnesses, bearing date the same day last aforesaid, declared, limited and appointed the said plantation to the use of the said Edmund Hyatt, his heirs and assigns, as a mortgage to secure the said bond, which was also soon after recorded in the office aforesaid, as will fully appear upon reference to the said office and the record of the said deed. And this defendant further says, that the said Edmund Hyatt is now, and was at the time of the filing of the complainant's said bill, a citizen of the State of New York, the same State whereof the complainant herself avers herself to be a citizen; that the said William Hasseltine is now, and was at the time of the filing of the said bill, resident and domiciled at or near Liverpool, in the Kingdom of England, and that Alfred L. Gillespie and Wm. R. McGahn, were citizens of South Carolina, at the filing of the said

bill; but that the said Alfred L. Gillespie has since removed to New York.

And this defendant further says, that Elias Nonus Ball, one of his co-defendants, he has understood and believes, was at the time of the filing of the said bill residing and for some time before had resided in the State of New Jersey, but as he is informed now resides in the State of Pennsylvania. And this defendant insists that the said Edmund Hyatt, William Hasseltine, Alfred L. Gillespie, Thomas R. McGahn and Elias Nonus Ball are necessary parties, and in fact indispensible parties to the said bill, three of whom are out of the jurisdiction and beyond the reach of the process of this court, and one of these, Edmund Hyatt, in fact a citizen of the State whereof the complainant herself avers herself to be a citizen. And he, this defendant, relies upon this want of parties now stated and shown to the court as an insuperable objection to the jurisdiction of this court sitting as a court of equity, and claims to be allowed to insist upon this want of parties in the same manner as if he had pleaded the same to the said bill.

And this defendant further answering, says that, as to the currency in which the purchase and payments were made by the said Hyatt, McBurney & Co., it was that which was universally in use throughout the community as money, and wherewith all purchases and payments of every kind were made, which were received in deposit by all the banks of the State of South Carolina at that time, and the said Hyatt, McBurney & Co., did not pay the said purchase money in any other manner than by their checks on the bank of South Carolina, and all other liens upon the said plantation, of which there were at least seven judgments, were paid off and satisfied by the said Elias Nonus Ball, out of the said purchase money.

And this defendant further answering, says that there is no truth in the assertion, if such is intended to be made in the said bill, that the said currency so paid for the said plantation was of no value; but that, on the contrary, this defendant avers that it was at that time of great value, and was a high price for the said plantation, and to raise this sum the said Hyatt, McBurney & Co. had to sell more than six hundred bales of cotton, which was after the war worth a great deal more than one hundred thousand dollars in the legal tender Treasury notes of the United States, and even at this present time would bring the said sum ($100,000) in the said notes last mentioned. And so this defendant says that the said Hyatt, McBurney & Co. were bona fide purchasers for valuable consideration, and that without any notice whatever which can affect them with the trusts stated in the said bill, because the said Hyatt, McBurney & Co. dealt with the said Alexander Robertson and John Freer Blacklock, as executors of their testator, holding securities for the purchase-money of the property, they were authorized and empowered to sell, and not as trustees changing an investment; and even if they erred in making improper investments of the money paid to them (which this defendant is advised is not so) the said Hyatt, McBurney & Co. could not be made liable, as the discharge

and release of the said mortgage was entirely within the power and authority of the said executors, in virtue of their office as executors, and this he hopes to unite in pleading in bar to any suit in equity brought by the complainant, wherein all the proper parties are made; or, should his objection for the want of parties be overruled, he then craves the benefit of the same for himself alone.

And this defendant further answering, says that as to the matters in the said bill charged and alleged against his co-defendant, William Ball, he of course knows nothing, but he humbly submits to this court that he, this defendant, is joined with the said William Ball in one suit, when it appears upon the statements and allegations therein, that the said bill is for several and distinct causes and matters that have no relation to or dependance upon each other, and that the said bill is, therefore, liable to the objections of multifariousness, which he now insists upon, and this defendant humbly submits to this honorable court, that in any event, according to the rules and principles of this honorable court, the complainant being a mere volunteer as to all the estate of the late testator, William A Carson, save only and except her life interest in one-third thereof, having paid nothing whatever for the portions thereof bequeathed and devised to her sons, and by them assigned to her without consideration, cannot claim against purchasers for valuable consideration any more than her interest in one-third of said estate for her life. And this defendant denies all and all manner of combination and confederacy wherewith he is by the said bill charged, without there is any other matter, cause or anything in the complainant's said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, avoided, traversed or denied, is true to the knowledge or belief of this defendant. All which matters and things this defendant is ready and willing to aver, maintain and prove, as this honorable court shall direct, and hereby prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

WM. McBURNEY,
McCREADY & SON,
Def'd'ts Sol'rs.

No. 10.] *Affidavit.*

THE UNITED STATES OF AMERICA,
Sixth Circuit, District of South Carolina:

Personally appeared before me, Wm. McBurney, and made oath that the facts and things contained in his foregoing answer, as far as they are derived from his own knowledge, are correct and true, and as far as they are derived from the information of others, he believes them to be true.

WM. McBURNEY.

Sworn to before me this 4 March, 1867.

DAN'L HORLBECK,
Clerk & Com. C. C. U. S. So. Ca.

(Endorsed:) This answer is filed with a protest that the complainant had no right or authority to substitute the bill of the 14 December, 1866, in the place of the bill filed on the 11th August, 1866, the said bill is not properly on file, and no subpœna thereon has been served. This defendant claims that if it should be so ruled, this defendant shall have leave to withdraw this answer from file.

MARCH 4th, 1867.

McCREADY & SON.

Filed 4th March, 1867.

DAN'L HOBRLBECK,
C. C. U. S. for So. Ca.

And on the 4th day of March, A. D. 1867, came into court the defendant, William J. Ball, by his solicitors, Simons & Simons, and filed the following answer, which answer is in the words and tenor following:

No. 11.] *Answer.*

In the circuit court. In equity.

UNITED STATES OF AMERICA,
South Carolina District:

The seperate answer of William J. Ball, who is jointly impleaded with Alexander Robertson, John Freer Blacklock, Elias Nonus Ball, William McBurney, William Carson, and James P. Carson, to the bill of complaint of Caroline Carson.

This defendant, now and at all times saving and reserving to himself all and all manner of benefit and advantage of exception to the manifold errors, uncertainties, and insufficiencies in complainant's bill of complaint contained, for answer thereto or unto such parts thereof as this defendant is advised is material for him to answer unto, answering, says that he was the surety to a bond of his co-defendant, Elias Nonus Ball, conditioned to pay the sum of about thirty thousand dollars to Alexander Robertson and John Freer Blacklock, executors of the last will and testament of William A. Carson, deceased, for the credit portion of the purchase money of certain slaves which belonged to the testator, and were sold by the said executors to the said Elias Nonus Ball, as this defendant was informed; that he does not remember the date of the said bond or its exact amount; that he was informed by the said Elias Nonus Ball, some time after the said bond was executed, that the same was paid in full, and that this defendant was discharged therefrom as surety, and the bond delivered up to the said Elias Nonus Ball; that he does not know how or when such bond was paid, and had no part in its payment in any manner whatsoever. And this defendant further says that he knows nothing of any of the matters stated in the bill, except as he has above stated.

This defendant further answering, says that he is advised that the said Elias Nonus Ball was a citizen and resident of the State of Pennsylvania, in the United States of America, at the time of the exhibiting of the complainant's bill of complaint, and now at this time is still a citizen and resident thereof; and that it is material and indispensible, that the said Elias Nonus Ball should be a party to the complainant's proceedings in any such matters as those alleged by her in her bill of complaint; and that no decree can be made according to justice and equity between the several parties in complainant's bill of complaint named, unless the said Elias Nonus Ball should be brought before the court as a party to the proceedings; and this defendant prays he may be allowed the same benefit of this defense, as if he had pleaded the same by plea.

And this defendant having fully answered, prays to be hence dismissed, with his reasonable costs and charges in this behalf sustained.

SIMONS & SIMONS,
Def't's Sol'rs.

No. 12.] *Affidavit.*

Personally appears William J. Ball, who being duly sworn, says that the facts set forth in the foregoing answer are true and correct, as far as they are within his own knowledge, and as far as he derives them from the information of others he believes them to be true.

W. J. BALL.

Sworn to before me this 2d March, 1867.

DAN'L HORLBECK,
C. C. C. U. S. for So. Ca.

(Endorsed:) This answer is filed with a protest, that this complainant had no right or authority to substitute the bill of 14 Dec'r, 1866, in place of the bill filed 11 August, 1866. The said bill is not properly on file, and no subpœna thereon has been served. Defendant claims that if it should be so ruled, defendant should have leave to withdraw this answer from the file.

March 4, 1867.

SIMONS & SIMONS.

Filed 4th March, 1867.

DAN'L HORLBECK,
C. C. U. S. for So. Ca.

And on the day of , A. D. 1867, came into court the defendant, John F. Blacklock, by his solicitor, B. H. Rutledge, and filed the following answer, which answer is in the words and tenor following:

No. 13.] *Answer.*

In equity.

UNITED STATES OF AMERICA,
District of South Carolina, Fifth Circuit:

The answer of John F. Blacklock, one of the defendants to the bill of complaint of Caroline Carson, complainant.

This defendant, now and at all times hereafter saving and reserving unto himself, all benefits of exception which can or may be taken to the many errors, uncertainties, and other imperfections in the said complainant's said bill of complaint contained, for answer thereto, or so much and such parts thereof, as this defendant is advised is or are material or necessary for him to make answer unto, answering, says:

That he admits that William A. Carson, of the Parish of St. Johns Berkley, State aforesaid, died in August, anno Domini one thousand eight hundred and fifty-six; and that the statements in said complainant's said bill are correct, so far as they relate to the disposition of the will of said W. A. Carson, deceased, and also as to the appointment of said defendant, with his co-defendant, Alexander Robertson, as executors thereof.

He admits also that he qualified on said will, as executor, together with Alexander Robertson aforesaid, and joined with him in the sales of the plantation "Dean Hall," with the negro slaves attached thereto to Elias Nonus Ball, and also in the sales of the other personal property to sundry other persons, a full discription of which transaction is contained in the answer of his co-defendant Alexander Robertson, the statements of which this defendant is cognizant of, and that he shared in the commissions legally accuring to the executors on said sales.

That some two or three years subsequently to the making of the said sales, upon the breaking out of the civil war which lately distracted this country, on or about the tenth day of May, A. D. one thousand eight hundred and sixty-one, this defendant left the State of South Carolina and took up his residence in Liverpool, England, and there remained during the whole continuance of the said war, and until some time after the cessation of hostilities between the two sections, and until the authority of the United States was fully restored, to-wit: until the 23 October, A. D. 1867.

That previous to his leaving the country as aforesaid, and up to the time of his departure therefrom, the said Ball had paid but a small portion of the interest money on his said bonds; and this defendant and his co-defendant supplied the wants of complainant and her family by advances of money, the precise amount of which it is difficult to ascertain at the present time on account of the loss of papers during the recent convulsion That subsequently to his departure from the country as aforesaid, said property remained entirely in the hands of his co-defendant, Alexander Robertson, and he has

not intermeddled in any way with the affairs of the said trust-estate since that date. That he has not consulted relative to the change of investment of the funds of said estate, nor did he share in any commissions resulting therefrom, nor was he indeed aware of the said change of securities that had been made until some time after said transaction was completed. That he did not consent to the acceptance of confederate money in payment of the bonds aforesaid, nor to the investment of the same in confederate bonds, and has not released any lien which said executors may have had on any property whatsoever, nor satisfied any mortgage for the securing payment of any money obligations due said trust estate; and, since the day of the date of his departure from the country above mentioned, is altogether unconnected with any transactions affecting the management, disposition or arrangement of said trust; and this defendant further answering, says that, under such circumstances, he cannot be held legally responsible for any losses complained of, and prays that he may be released and discharged from all liability and responsibility in connection with said trust. And this defendant denies all and all manner of unlawful combination and confederacy, wherewith he is by the said bill charged, without this, that there is any other matter, cause, or thing in said complainant's said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true, to the knowledge and belief of this defendant; all which matters and things this defendant is ready and willing to maintain, aver, and prove, as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

J. F. BLACKLOCK,
B. H. RUTLEDGE,
Def't's Sol'r.

Sworn to before me this 13th February, 1867.
H. E. YOUNG, *Magistrate.*

And on the 8 day of May, A. D. 1867, came into court the defendant, Alexander Robertson, by his solicitor, H. E. Young, and filed the following answer, which answer is in the words and tenor following:

Answer.

In equity.

UNITED STATES OF AMERICA,
District of South Carolina, Fifth Circuit:

The answer of Alexander Robertson, one of the defendants to the bill of complaint of Caroline Carson, complainant.

This defendant, now and all times hereafter, saving and reserving

unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as this defendant is advised, is or are material or necessary for him to make answer unto, answering saith: That he admits that William A. Carson, of the parish of St. Johns Berkley, state aforesaid, died in August, A. D. one thousand eight hundred and fifty-six, leaving of force his last will and testament, by which he disposed of his property, real and personal, as set forth in complainant's said bill, and appointed this defendant and his co-defendant, John F. Blacklock, executors and testamentary guardians of his children. That both of said executors qualified under said will, and took upon themselves the execution of the same and the administration of the estate of said William A. Carson, deceased, and towards the close of the present year anno Domini one thousand eight hundred and fifty-six and the beginning of anno Domini one thousand eight hundred and fifty-seven, the said executors, in pursuance of said directions in said will contained, sold out the entire estate of the said William A. Carson, both real and personal; and, after having paid the debts of said testator, held the balance of the proceeds of said sales in trust for the purposes specified in said will. That the plantation, known as Dean Hall, was sold to one Elias Nonus Ball, of Saint Johns Berkley parish, in said State, for fifty thousand dollars, ($50,000,) fifteen thousand dollars thereof being paid in cash, and the balance in bonds of the said Elias Nonus Ball, to wit: three bonds of $9,000 each, two bonds of $4,000 each, secured by a mortgage of said plantation; that the larger portion of the negro slaves of said testator were also sold by said executors at the same time to the said Elias Nonus Ball for —— dollars in cash, the balance of the purchase money upon said sale, consisting in the joint and several bonds of said Elias Nonus Ball and William J. Ball, to wit: three bonds of $11,000 each, all of which said bonds were secured by a mortgage of the negro slaves as aforesaid; and that at the time above-mentioned other negro slaves and other personality were sold to divers other persons.

That the amount of said sales, together with other claims collected, was some ($184,261) one hundred and eighty-four thousand two hundred and sixty-one dollars, out of which ($117,328) one hundred and seventeen thousand three hundred and twenty-eight dollars were applied to the payment of the debts of the said testator, and sixty-four thousand and five hundred dollars ($64,500) divided into three parts, and held by said executors for the several and respective legatees, according to the provisions of said will as stated in complainant's said bill, leaving a balance in the hands of the executors aforesaid of ($2,433) two thousand four hundred and thirty-three dollars, as will appear by reference to their accounts as rendered before the ordinary of Charleston district, and hereunto annexed, as an exhibit, and subsequently accounted for in the administration of the said estate. That the share of each legatee amounted to the sum of

twenty-one thousand five hundred dollars, ($21,500,) and in each case said sum consisted of two bonds of the said Elias Nonus Ball, conditioned, the one for ($11,000) eleven thousand dollars and the other for ($9,000) nine thousand dollars, and a third part of another bond of the said Ball for ($4,000) four thousand dollars, and of one hundred and sixty-six 67-100 dollars in cash.

That the bonds aforesaid of ($11,000) eleven thousand dollars each, amounting in all to ($33,000) thirty-three thousand dollars, were in the joint and several bonds of Elias Nonus Ball and William J. Ball, and was given for the credit portion of the neg chased by the said E. N. Ball, and were further secured b gage of said negro slaves, and that three of the bonds each and the bonds of ($4,000) four thousand dollars, toget another bond of ($4,000) four thousand dollars, were give said Elias N. Ball for the credit portion of "Dean Hall" pl and secured by a mortgage of same.

And this defendant further admits that some time in anno Domini one thousand eight hundred and sixty-three, (1863,) he accepted payment of said bonds in the currency of the late Confederate States of America, and subsequently invested the same in eight per cent. bonds of said Confederate States; and, on the twenty-first day of July, anno Domini one thousand eight hundred and sixty-six, (1866,) he entered satisfaction on said mortgage on Dean Hall plantation. And this defendant, further answering, says in regard to the wines alluded to in said complainant's said bill, the same being in the nature of a specific legacy for Wm. Carson and James P. Carson, and of a perishable character, the greater part was sold and the proceeds invested in the remaining bond of Elias N. Ball for ($,4000) four thousand dollars previously referred to; but a portion was reserved for the said William and James P. Carson in kind, and was sent during the late war, into the upper portion of the said State for safe keeping in charge of James Petigru Carson, and this defendant believes and asserts was by him used; and so far as the plate referred to in said bill was concerned, the same was deposited, shortly after the death of the said W. A. Carson, in a trunk which was never afterwards opened while it remained in the custody of this defendant, and was sent to the town of Columbia, where it was lost and destroyed upon the sack of that city by the troops of the United States, under General Sherman.

And this defendant, further answering, says that he cannot admit the statement of said complainant in said bill contained, that the said trustees have not paid to her any portion of the income to which she or her children were entitled under the will of said W. A. Carson, excepting certain small sums to James Petigru Carson, in the alleged illegal currency of the late Confederacy; that from the time of the sale of the plantation, negro slaves, and other personality, as aforesaid, to Elias Nonus Ball, but little interest was paid upon his said bonds by said Ball up to the time when this deponent accepted payment of the whole of said debts in the currency of the late Confederate States; and during the period which elapsed from the sales afore-

said, until the blockade of the southern ports became so rigorous that remittances to the north became impracticable, this defendant did not fail to supply complainant with the means of living for herself and family; that complainant and her sons were, in consequence thereof, largely indebted to this defendant and his co-defendant, John F. Blacklock, for advances made for their use as aforesaid, the larger portion, if not the whole of said advances being in money of a gold-value previous to the war aforesaid, which advances (the exact amount whereof cannot now be ascertained by reason of the destruction of the larger portion of this defendant's books and papers in Columbia, upon the burning of that place by the Federal troops, under General Sherman,) were all repaid to this defendant and his co-defendant, John F. Blacklock, upon the acceptance by this defendant of payment of the bonds of said Elias Nonus Ball, in the currency of the said late Confederate States.

That this defendant, also, during the continuance of the late war aforesaid, from time to time as his necessities required it, supplied the said James Petigru Carson, then serving in the armies of the said Confederate States as a soldier, although a minor and incapable of giving valid acquittances, with sums of money in confederate currency, at that time the sole currency of this section of the country, taking from ——, his individual receipt for the same and his pledge of honor to approve and confirm said payments when he arrived at years of maturity.

And this defendant, further answering, says he cannot admit as in said bill of complaint alleged, that complainant frequently called upon him to account to her for his administration of the estate of said William A. Carson, deceased; that during the war aforesaid, he received no communication whatsoever from said complainant, either calling upon him for account or payment of income or otherwise; but, that after the close of that struggle, he admits that complainant did address him on the subject of the said trust estate; that in the communication last alluded to, said complainant alleged an absolute assignment to her from her two sons (the younger of whom had barely reached his majority) all of their right, title, and interest in the estate of their late father, by which she became entitled in her own right to the whole of said estate, and exhibited, thro' her attorney, to this defendant a paper-writing of such purport, and, by virtue thereof, demanded from this defendant an immediate assignment to her of all the solvent securities still remaining to said estate, giving this defendant notice at the same time that he would be held responsible for losses which have occurred by reason of investments in bonds and other securities of the late Confederate States; that this defendant was advised by his counsel that he could not be legally required to settle the trust estate aforesaid, by piecemeal, but was entitled upon turning over the securities to the *cestui que trust*, to demand a release or receipt in full of all demands from them, and in case of refusal to comply on the part of said *cestui que trust*, to decline to transfer said securities as proposed by them, and to apply to a court of equity of competent jurisdiction, in which his

accounts might be examined and adjudicated upon, and from which he might receive a full and complete discharge from further responsibility upon showing an honest and faithful administration of his said trust.

That in pursuance of such views, on the twenty-sixth day of July, anno Domini one thousand eight hundred and sixty-six, (1866), and previous to the filing of the complainant's said bill, this defendant instituted proceedings in the court of equity for Charleston district, in the State of South Carolina, to which said complainant and her sons, James P. Carson and William Carson, as also his co-defendant, John F. Blacklock, were duly made parties; but complainant having filed said bill in this honorable court, in which the same questions are made as in the bill in the State court aforesaid, as well as other questions affecting other and additional parties, this defendant discontinues the said suit in the court of the State of South Carolina, and appears and answers as aforesaid.

And this defendant says, further, that at the time of the demand of said complainant upon this defendant for payment of income, as well as a transfer of principal, after the close of the war, that there was no interest whatsoever in his hands to meet her requests, for none of the sureties, in which that portion of the property of said estate which was saved consisted, was producing interest at that time, the interest, up to that period, on stocks of the city of Charleston having been funded, and the other securities paying no interest then nor since. That, subsequently to the commencement of proceedings in equity for a settlement of said estate, a small amount of income has been realized on the said stocks of the city of Charleston, to the amount of some hundred dollars or more.

And this defendant, further answering, admits that, in case the alleged assignment of James Petigru Carson and William Carson of all their right, title and interest to said complainant is recognized and approved by this honorable court, the said complainant is entitled to whatever remains of the estate as aforesaid, but denies that she has any ground to hold him responible for losses which may have occurred from investments in confederate securities; and says that he acted in the management and administration of the said trust estate as a prudent man would have done, and as he himself did do, in reference to the management of his own affairs, and conformed in his actions with respect to the said estate to those of the wisest and most farseeing in the community in which he lived; that he acted, moreover, in strict compliance with the powers given to him in said will, and is protected in his said action by the authority thereby invested in him, to wit: "I authorize and empower my executors or qualified executor to vest and reinvest the purchase-money of my estate so as aforesaid to be held in trust by them, in such public or private securities on stocks as they may deem best;" that, after the sale to the said Elias Nonus Ball, and his failure to pay interest altogether or paying only small part thereof on his said purchase for several successive years, by which his said debt was annually increasing, with no increase of the security thereupon, it seemed advisable to this

defendant to take in payment of his obligations the currency of the Confederate States, a then *de facto* government which enjoyed the confidence of the entire south, and his opinions were approved and confirmed by the advice of the late honorable James L. Petigru, the father of the complainant, who had been, throughout his business life, the legal adviser and director of the defendant, and, also, the legal adviser and director of said complainant; that, furthermore, he was expressly authorized to invest in such securities, by an act of the legislature of the State of South Carolina, which was passed in December, A. D. one thousand eight hundred and sixty-one, and cannot be held responsible for acting in obedience to the law of the State in which he lived and which he had been always taught, was the rule prescribed by which, as a citizen of said State, it was his duty to square his conduct.

And this defendant craves reference to his accounts filed herewith as Exhibit A, which said accounts are as fully and accurately made as was practicable under the circumstances of the case, in view of the loss of the papers and documents which took place during the war, and claims that he is entitled to a full discharge upon turning over the securities which may now be in his hands to said *cestui que trust;* and that his refusal to transfer to said complainant, except under an order of a competent tribunal, or upon a full release, was in accordance with law, reason and the rules of equity.

And this defendant denies all and all manner of unlawful combination and confederacy, wherewith he is by the said bill charged, without this, that there is any other matter, cause or thing in the said complainant's said bill contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided, or denied, true to the knowledge or belief of this defendant, all which matter and things this defendant is ready and willing to aver, maintain and prove as this honorable court may direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

H E. YOUNG,
Defendant's Solicitor.

Filed 8th May, 1867.

And on the——day of——, A. D. 1867, came into the court the complainant, Caroline Carson, by her solicitors, Magrath and Lowndes, and filed the following replication, which replication is in the words and tenor following:

Replication.

In equity.

THE UNITED STATES OF AMERICA,
Fourth Circuit, District of South Carolina:

CAROLINE CARSON
vs.
ALEXANDER ROBERTSON.

The replication of Caroline Carson, complainant, to the answers of Alexander Robertson, John F. Blacklock, William J. Ball, William McBurney.

This repliant, saving and reserving unto herself all and all manner of advantage of exception to the manifold insufficiences of the said answers, for replication thereunto saith, that she will aver and prove her said bill to be true, certain and sufficient, in the law, to be answered unto, and that the said answers of the said defendants are uncertain, untrue and insufficient to be replied unto by this repliant, without this, that there is any other matter or thing, whatsoever, in the said answers contained, material or effectual in the law to be replied to, confessed, or avoided, traversed or denied, is true; all which matters and things, this repliant is and will be ready to aver and prove, as this honorable court shall direct; and humbly prays, as in and by her said bill she hath already prayed.

MAGRATH & LOWNDES,
Complainant's Solicitors.

Proceedings of court on 12th and 18th May.

Tuesday, 12 May, 1868. The court was opened at 11 o'clock a. m. Hon. Geor. S. Bryan, district judge, presiding.

CAROLINE CARSON
vs.
ALEXANDER ROBERTSON, JOHN FREER Blacklock, Elias Nonus Ball, Wm. McBurney, Wm. Ball, Wm. Carson, James Petigru Carson. — Bill for account, injunction and relief.

James Lowndes, compl't's solicitor, James Simons, Rutledge & Young, McCrady & Son & Campbell, for respondents.

This cause, which was under consideration yesterday, was again heard.

Monday, May 18, 1868. The court was opened at 11 o'clock a. m. Hon. Geo. S. Bryan, dist. judge, presiding.

The court had under consideration the bill filed by Caroline Carson *vs.* Alex. Robertson et al., and adjourned its further hearing after hearing E. McCrady and A. G. Magrath, and after adopting following order:

Order of court refusing the motion to take bill off file.

CAROLINE CARSON
vs.
ALEX. ROBERTSON ET AL. } Bill in equity.

Magrath & Lowndes, compl't's sol'rs.

On hearing argument in support of the motion of the solicitors of William McBurney and William Ball, and of the solicitors of claimant against it, it is ordered that the application in the said motion made to take the amended bill filed 14 Dec'b'r, 1866, from the file of this court, to be refused, and that the said bill and the answers of Wm McBurney, W. J. Ball, Alexander Robertson and J. F. Blacklock do stand as the bill and answers in the above cause. 18 May, 1868.

GEORGE S. BRYAN,
U. S. Judge Dist. So. Ca.

Filed 18th May, 1868.

Order for hearing demurrer of Ball & McBurney, and to take their answers off file.

CAROLINE CARSON
vs.
ALEXANDER ROBERTSON ET AL. } Order.

It is ordered that, as to the defendant[s], William McBurney and W. J. Ball, the said cause stand for a hearing on the demurrer to original bill, filed the 11th of August, 1866, and that they, the said William McBurney and William J. Ball may not be concluded by anything therein.

It is further ordered, that they have leave to take from the register's office the answer in the cause filed under protest on the 4th of March, 1867; and that they shall not be considered parties to the bill filed by the complainant as a substitute for the original bill, on the 4th Dec'r, 1866, nor required to plead, answer or demur thereto; and that the complainant have leave to strike the names of the said Wm. McBurney and William J. Ball out of the prayer of the said last-mentioned bill.

Proceedings of Court.

CAROLINE CARSON
vs.
ALEX. ROBERTSON ET AL. }

Messrs. Simons & Simons, and McCrady & Son, moved that the entry of this case on the docket be set aside, as improvident and premature, and that the cause be struck from the docket. After full argument, the judge refused, and which order is filed, as of this date, with the proceedin[g]s, dated Friday, 5 June, 1868. Order refused on argument this 5 of June, 1868.

Order to strike the cause from the docket as prematurely entered.

Before honorable Geo. S. Bryan, sitting alone in the circuit court.

It appearing by the introduction of the bill, that the complainant according to the 20th rule of the rules of practice of this court, requiring that the introductory part of the bill shall contain the names, place of abode, and citizenship of all the parties, plaintiffs and defendants, by and against whom the bill is brought, has brought her bill amongst other defendants, against Elias Nonus Ball, alleged to be of the city of Charlestown, and a citizen of South Carolina, and has prayed the process of this court to require the said Elias Nonus Ball to appear and answer the said bill, according to the frame, copy, prayer and interrogatories thereof, and it further appearing that the marshal of this court has returned the subpœna adrespondendum issued out of this court, "*Non est inventus*," as to the said Elias Nonus Ball, and the said Elias Nonus Ball hath not appeared nor answered, and although the said subpœna as to the said Elias Nonus Ball has not been executed and served upon the said defendant, the cause hath notwithstanding, been entered on the docket as pending in the court, and it therefore appearing, that the cause has been improvidently and prematurely entered on the said docket, and is not yet at issue as to all the defendants to the said bill so brought by the complainant, on motion of Messers. Simons & Simons, solicitors for the defendant, William J. Ball, and of Messrs. McCrady & Son, solicitors for the defendant, William McBurney, it is ordered that the said entry on the docket be set aside, and the cause struck from the docket until the said subpœna shall have been returned as served and executed upon said defendant, Elias Nonus Ball, or the cause shall be otherwise proper at issue.

Order to authorize the clerk to name commissioners.

Wednesday, 10th June, 1868, the court was opened at 11 o'clock a. m., Hon. George S. Bryan, dist. judge, presiding.

CAROLINE CARSON
vs.
ALEX. ROBERTSON ET AL. } In equity.

Upon motion of B. H. Rutledge and Henry E. Young, solicitors for Alexander Robertson and John F. Blacklock, defendants, respectively, it is ordered that Daniel Horlbeck, esq'r, of said court, be and hereby is empowered to name commissioners for the purpose of taking testimony in above cause.

GEO. S. BRYAN,
U. S. Judge Dist. So. Ca.

We consent—

MAGRATH & LOWNDES

10th JUNE, 1868.

Order appointing H. Y. Gray commissioner.

Upon motion of B. H. Rutledge and H. E. Young, solicitors for Alexander Robertson and John F. Blacklock, defendants, respectively, it is ordered that Henry Y. Gray, esquire, be and is hereby appointed an examiner to take such oral testimony as may be adduced in said cause.

June 10th, 1868.

GEO. S. BRYAN,
U. S. Judge Dist. So Ca.

We consent—

MAGRATH & LOWNDES, *Sol'c's.*

Mr. McCrady addressed the court until the hour of adjournment.

Order appointing D. Horlbeck commissioner to take testimony.

Tuesday, 23 June, 1868, the court was opened at 11 o'clock a. m., Hon. Geo. S. Bryan, dist. judge, presiding.

On motion of Magrath & Lowndes, complainant's solicitors, it is ordered, that the order of the court in this case, made 10th of June, A. D. 1868 be so amended as to appoint Daniel Horlbeck, esq'r, examiner in place of Henry Y. Gray, and that he be authorized to take all such testimony, oral and documentary, as may be adduced in the case.

23d June, 1868.

GEO. S. BRYAN,
U. S. Judge Dist. So. Ca.

Proceedings of court of 3d and 4th of June.

Thursday, 3d June, 1869, the court was opened at 11 o'clock a. m., Hon. Salmon Chase, Chief Justice, Hon. Geo. S. Bryan, district judge, presiding.

CAROLINE CARSON
vs.
ALEX. ROBERTSON ET AL. } Bill for relief, injunction, &c.

Magrath & Lowndes for compl'ts., McCrady & Simons for deft's.

Case was heard, and its further consideration continued till tomorrow.

Friday, 4th June, 1869, the court was opened at 11 o'clock a. m., Hon. Salmon P. Chase, Chief Justice, Hon. Geo. S. Bryan, district judge, presiding.

CAROLINE CARSON
vs.
ALEX. ROBERTSON ET AL. } Bill for relief.

Messers. Magrath and McCrady were heard, and opinion reserved also Mr. James Simons.

Demurrer overruled.

United States circuit court for So. Ca. In equity.

Saturday, 5th June, 1869, the court was opened at 10 o'clock a. m., Hon. S. P. Chase, C. J., presiding, and Hon. Geo. S. Bryan, dist. judge.

CAROLINE CARSON
vs.
ALEX. ROBERTSON ET AL. } Bill for relief, &c.

The cause was heard some days since, and on this day, the court (through Chief Justice), overruled the demurrer, and granted leave to plead or answer.

Report of testimony taken by D. Horlbeck.

CAROLINE CARSON
vs.
ALEX. ROBERTSON, JOHN FREER Blacklock, Elias Nonus Ball, W'm McBurney, W'm Ball, W'm Carson, Ja's Petigru Carson. } Bills in equity for account, injunction and relief.

Magrath & Lowndes, compl't's sol'rs, Rutledge & Young, sol'rs for Robertson & Blacklock, Simons & Simons for W'm Ball, McCrady & Son for W'm McBurney.

29th JUNE, 1869.

Testimony taken by Dan'l Horlbeck, clerk, under special order of court. Proof adduced, that each attorney had notice to appear on this day at 1 o'clock.

M'r Lowndes and M'r E. McCrady pressent. M'r McCrady, objected to the examination being taken in the absence [of] Simons who, he says he believes, is engaged in the U. S. court.

By consent, the examination is to take place on Saturday next, at 11 o'clock, at the Federal court house.

DAN'L. HORLBECK, *Clerk.*

3d JULY, 1869.

Present: Messers. Lowndes, McCrady & Rutledge.

Wm. McBurney sworn.

Direct examination by Mr. Lowndes:

1. The payment to E. N. Ball, referred to in my answer, was made in checks of Hyatt, McBurney & Co., on bank of So. Ca.

2. At the time of those checks the deposits in the bank of So. Ca. of Hyatt, McBurney & Co. was in a small portion of confederate notes, and much the larger amount was made by checks of other parties in bank, which were put to credit of Hyatt, McBurney & Co.

3. Witness does not know against what funds the deposit checks were drawn, that is, checks which went to order of Hyatt, McBurney & Co. Hyatt, McBurney & Co. had no credit at that time in coin in bank of So. Ca.; now in U. S. Treasury notes.

5. The checks given to E. N. Ball by Hyatt, McBurney & Co., were deposited to the credit of Robertson & Blacklock, in the bank of So. Ca., and charged to Hyatt, McBurney & Co. This witness qualifies statement and confirms his answer as to one of the checks, and not the others.

6. As to the checks amounting to $16,000 in the gross, I don't know what deposit the said E. N. Ball made of them. They went to the liquidations of liens and judgments against E. N. Ball.

7. Witness does not know how the credit in Hyatt, McBurney & Co's' bank-book was made, but thinks the practice of the bank was to enter credit for checks when checks were deposited, and currency when currency was deposited.

8. I suppose that if the checks were paid at the teller's stand, they would have been paid in confederate currency, as there was no other currency at the time in existence here.

9. When the checks were paid they were singly charged against drawers, without reference to the manner in which they were paid. Long after that date, the banks did make a difference; I think it was not till '64. They then made specific contracts, *i. e.*, books were so headed that it appeared the transaction was in confederate currency.

10. I know from the books of the banks of So. Ca., that Robertson & Blacklock deposited the checks of $84,207.56 to their credit in bank of So. Ca. From same source of information I know that Robertson and Blacklock were charged by the bank, with a check drawn to the amount of $84,000 against the deposit; this was on 24 April, 1863.

11. The checks referred to were drawn by Hyatt, McBurney & Co., simply for so much money. It was the understanding at all the banks that payments were to be made in confederate currency, as there was no other currency at the time. There was no specific mode of payment agreed upon in payment of checks. The checks were simply drawn for so much money.

12. In that part of my answer to the bill wherein I say that the currency in which the purchase and payment were made by the said Hyatt, McBurney, was that which was universally in use throughout the community as money, I mean by the word currency, confederate treasury notes.

13. The checks were charged against Hyatt, McBurney & Co. without any specification as to whether pay was made in confederate treasury notes or in any other money.

14. There was no distinction until '64 as to how deposits or pay ments were made.

Cross-examined by Mr. Edward McCrady:

15. Was there anything unusual, or out of the way of business, as it was done at that time, in paying the purchase money for "Dean Hall?"

Ans. Nothing at all.

Re-direct examination by Mr. Lowndes:

16. The contract with Mr. Ball was cash, but that cash was understood to be the money which was used in every day's transactions.

A. S. Johnson sworn.

Direct examination by Mr. Lowndes:

1. I am acting president of the bank of South Carolina, and have been a director for sixteen or seventeen years. In '63, and the latter part of '62, the only currency used by the banks was confederate treasury notes.

3. I have record of a check drawn on 23 April, '63, by Hyatt, McBurney & Co., for $84,207.56, which was charged as No. 798, against the account of said firm.

4. The check was paid by a credit to Robertson, Blacklock & Co., on same day. The understanding of the bank was that the transaction was in the currency of the day, which was confederate currency.

5. The credit of Hyatt, McBurney & Co. on that day exceeded the amount of the check. I don't know what the credit was for, but the transactions before the war were regarded as transactions after the war.

6. The payments made by the bank in April, 1863, were all in confederate treasury notes, as there were no other notes in circulation.

7. It was understood when the credit was given, in April, '63, and some time previous, that the credit was in the currency of the day, viz: confederate treasury notes.

8. The entry of the credit for check and currency in Hyatt, McBurney & Co's. bank-book, &c., was payable in the currency of the day.

Cross-examination by Mr. McCrady:

1. In that bank (bank of So. Ca.) the transition from the old way

of doing business to the new, up to April, '63, was not particularly noticed in books, and was not particularly specified until '64.

A. S. JOHNSON,

Sworn to before me this 3 July, 1869.

DAN'L HORLBECK,
C. C. C. U. S. for So. Ca.

To the Hon., the Judge of the Circuit Court of the U. S. for So. Ca.:

I have the report that the eight pages of paper preceding contains an accurate statement of the testimony of Messrs. McBurney and Johnson, taken by me, under order of court of 23d June, 1868.

DAN'L HORLBECK,
C. C. C. U. S. for So. Ca.

CHARLESTON, July 10th, 1869.

Dan'l Horlbeck, esq., C. U. L. D. Court:

DEAR SIR:—The package containing copies of the testimony of Mr. A. S. Johnson and myself in the case of Caroline Carson *vs.* Robertson and Blacklock *et al.*, was duly received. Mr. McCrady handed me the copy sent to him. In comparing it with the other, I found some verbal inaccuracies and omissions, and Mr. McCrady said he would appoint a time to meet you and have the copies compared with your original notes and signed. Awaiting his appointment of time, I am, resp'y yours,

WILLIAM McBURNEY.

Mr. Johnson will attend also, at the time appointed.

U. S. AMERICA,
Dist. of So. Ca.:

Before D. Horlbeck, clerk, as referee, to take testimony in case in Circuit Court for So. Ca.

CAROLINE CARSON
vs.
ALEX. ROBERTSON ET AL. } Bill in equity.

Magrath & Lowndes, Rutledge & Young, for respondents.
Wm. Whaley brought forward on part of defendants.

Examination-in-chief:

1. I know of the sale, by executors of Carson, to Hyatt, McBurney & Co., of Dean Hall. (Mr. Lowndes here reserved all right of objection to all this testimony, on the ground that the references in this case have been closed.)

2. I negotiated the matter for the parties on both sides, more especially representing Mr. McBurney.

3. I carried my negroes to Dean Hall in 1861, and engaged in planting with Elias Ball, then the proprietor. After planting for

some time, became dissatisfied with Mr. Ball, and to get rid of him, persuaded Mr. McBurney to buy him out, and I conducted the negotiation. To perfect the title the executors of Carson had to satisfy the mortgages on the property. Pending the matter, I was attending a meeting of the commission on Mr. Petigru's code, as one of the committee to examine the same, in the spring of 1863.

This was at Mr. Heng's, and Mr. Petigru seated there at the time. Mr. Petigru was aware of the negotiations for the purchase and sale He came into the room where the committee was in session, and insisted that I should leave the committee and go up to Dean Hall and conclude this matter, as, he said, Ball paid nobody, and he could get no money for the boarding and schooling of Jimmy Carson, the child of Mrs. Carson, and his grandchild. Mr. Petigru expressed great anxiety to have the matter wound up, to-wit: the purchase and sale (Mr. Lowndes, for complainant objected to the testimony of Mr. Petigru on the ground of its irrelevancy.)

I went to Dean Hall and completed the bargain with Ball. McBurney was to pay one hundred thousand dollars for the plantation, in cash The money was paid, and the mortgages satisfied.

By Mr. Rutledge:

4. Do you know, or not, whether Mr. Petigru was the agent in fact of Mrs. Carson?

I do not; but he acted throughout as one in authority, and so I believed him, and acted on his direction. Mrs. Carson, at the time of these transactions, was at the north; her son, James Carson, was here and a boy. Mr. Petigru, I would say, was in "*loco parentis.*" He spoke of his boarding and schooling, &c. Mr. Lesesne was his uncle.

Cross-examined by Mr. Lowndes:

1. I was not the agent of Mrs. Carson, nor was I the agent of either of the sons, but considered myself as representing Mr. Petigru, the grandfather. Mr. Petigru was sick at the time. Mr. Petigru never told me he was the agent of Mrs. Carson, or her children.

2 I first suggested Mr. McBurney to purchase Dean Hall, and then went and asked Ball if he would sell. I do not think Mr. McBurney cared much about the matter, and was concerned in this matter to oblige me.

3. I do not not know who was the guardian of James Carson.

4. My opinion was that the payment was to be in confederate treasury notes.

WILLIAM WHALEY.

To the Hon., the Judge of the circuit court of the United States for So. Ca.:

I have the honor to report that the seven preceding pages of paper contain the testimony of William Whaley, taken by me under order of court of 23 June, 1868.

DANIEL HORLBECK,
C. C. C. U. S. for S. Ca.

Filed Feb'y, 1871.

Decree on merits of the case.

In the circuit court of the United States, District of South Carolina. In equity.

CAROLINE CARSON
vs.
ALEXANDER ROBERTSON ET AL.

On hearing the pleadings and the arguments of counsel in this cause, it is adjudged and decreed that the surrender by the defendant, Alexander Robertson, of the bonds of Elias N. Ball, and the satisfaction of the mortgage of Dean Hall, to secure the said bonds held by him as trustee under the will of William A. Carson, for confederate treasury notes, were done in breach of his duty as trustee, and are null and void, and that the obligors of the said bonds are not discharged from the payment thereof, and that the mortgage of Dean Hall plantation, by Elias N. Ball, to secure certain of the said bonds, is a valid and subsisting mortgage on the said plantation in the hands of the purchaser thereof, and that the complainant is entitled to the said bonds, and to enforce mortgages as security for the same.

It is further ordered and decreed that the said bonds be set up as valid debts, and the said mortgage be set up as a valid mortgage, and the defendants, William McBurney and William J. Ball, do surrender, on or before the first day of July, A. D. 1872, to the clerk of this court, any of the said bonds of Elias N. Ball in their possession, respectively, and that the defendant, William McBurney, do surrender to the said clerk the mortgage of Dean Hall, made by Elias N. Ball to Alexander Robertson and John F. Blacklock, executors, and referred to in the pleadings.

It is further ordered and decreed that the clerk of this court do cancel the satisfaction of the said bonds and mortgage on the records thereof made, and that the said Alexander Robertson, by his assignment thereof, transfer to the complainant the right to collect the said bonds, or in case of default to foreclose the mortgage of Dean Hall, given to secure the same.

It is further ordered, adjudged, and decreed that the sum of thirty-one thousand dollars ($31,000) is due as principal on the said bonds of Elias N. Ball, to Alexander Robertson and John F. Blacklock, payment whereof is secured by the mortgage of the said Dean Hall plantation, together with interest thereon, payable annually, from the 23d day of April, A. D. 1863, and that the sum of thirty three thousand ($33,000) dollars is due on the bonds of Elias N. Ball and William J. Ball, together with interest, payable annually, from the 23d of April, A. D. 1863, and that the said sums and interest are payable to the complainant. It is further ordered and decreed that the said sum of thirty-one thousand dollars, and interest due thereon, are a lien and a charge on Dean Hall plantation, and that if the same be not paid, on or before the first day of August, A. D. 1872, the equity of redemption of all the parties to this suit, and of Hyatt,

McBurney & Co., in the said Dean Hall plantation be forever barred and foreclosed, and that the marshal of this court do sell the said plantation, at public auction, in the city of Charleston, after due notice, on the following terms, viz: One-fourt[h] cash, and the ballance in one, two, and three years, the credit portion to be secured by the bond of the purchaser, bearing interest, payable annually, and a mortgage of the property sold, and that he do first apply the cash proceeds of sale, and assign so much as may be necessary of the said securities in satisfaction of complainant's claim, and that if any of the said securities remain, he assign them to the defendant, William McBurney, in such manner that the interest of complainant shall have priority. It is further ordered and decreed that if the complainant become the purchaser of Dean Hall at the said sale, the marshal do allow her to set off her claim herein established as a lien on Dean Hall, or so much as shall be necessary, against her bid.

It is further ordered and decreed that the defendant, William J. Ball, do pay to the claimant, on or before the first day of August, A. D. 1872, the amount of principal and interest due on the joint and several bonds of himself and Elias N. Ball, and that on his failure to do so, process issue against him to enforce such payment.

It is further ordered and decreed that the defendant, Alexander Robertson, account, before the clerk of this court, on or before the first day of August, 1872, as executor and trustee, under the will of William A. Carson, and that the said clerk report on or before the 15th day of August, 1872, the amount due by the said Alexander Robertson to the complainant as legatee, under the said will, and as assignee of the rights of her sons under said will, and that on the coming in of the said report, and the order of the court thereon, the said Alexander Robertson do pay the amount reported to be due as the same may be then ordered.

It is further ordered and decreed that the defendants, Alexander Robertson, William McBurney, and William J. Ball, do pay the costs heretofore accrued in this cause, in the proportion, to be fixed by the clerk, and that the complainant have leave to apply for further orders at the foot of this decree.

HUGH L. BOND, *Judge, &c.*

MAY 2, 1872.

Claim and allowance of appeal.

The circuit court of the United States, fourth circuit, District of South Carolina. In equity.

CAROLINE CARSON *vs.* ALEXANDER ROBERTSON, JOHN FREER Blacklock, William McBurney, Elias N. Ball, William J. Ball, William Carson, and James P. Carson.	Bill for account, injunction and relief.

Claim and allowance of appeal from decree thereon.

And now, Alexander Robertson, John Freer Blacklock, William

McBurney, and William J. Ball, of the above-named defendants, after a final decree entered into this cause, come and show to the court that the matter in dispute exceeds the sum of two thousand dollars, (that the defendants, Elias N. Ball, William Carson, and James P. Carson, though named in the subpœna to the bill of complaint have not been served, appeared, or answered thereto, and that the said Elias N. Ball has lately deceased, and that his representatives have not been made party thereto,) and thereupon claim an appeal from the said final decree to the Supreme Court of the United States, next to be holden at Washington, on the first Monday in December next, and that the same is accordingly allowed, and the appellant is ordered to serve the usual citation according to law.

RUTLEDGE & YOUNG,
Sol'rs for Robertson & Blacklock.
McCREADY & SON,
Sol'rs for William McBurney.
SIMONS & SIMONS,
Sol'rs for W. J. Ball.

Allowed

GEO. S. BRYAN,
U. S. Judge, Dis't. of S. C.

14 MAY, 1872.

Appeal bond of William McBurney.

The circuit court of the United States, fifth circuit, District of South Carolina. In equity.

CAROLINE CARSON *vs.* ALEXANDER ROBERTSON, JOHN FREER Blacklock, William McBurney, Elias N. Ball, William J. Ball, William Carson, and James P. Carson.	Appeal bond.

Know all men by these presents that we, William McBurney and John L. Fanley, are held and firmly bound unto Caroline Carson in the full and just sum of three thousand dollars, to be paid to the said Caroline Carson, her certain attorney, executors, administrators or assigns, to which payment, well and truly to be made, we bind ourselves or heirs, executors and administrators, jointly and severally by these presents, sealed with our seals, and dated this fourteenth day of May, in the year of our Lord one thousand eight hundred and seventy-two.

Whereas, lately at a circuit court of the United States, fifth circuit, district of South Carolina, holden at Charleston, in a suit pending in said court between Caroline Carson, complainant, and Alexander Robertson, John Freer Blacklock, William McBurney, Elias N. Ball, William J. Ball, William Carson, and James P. Carson, a

decree was rendered against the said Alexander Robertson, John Freer Blacklock, William McBurney, and William J. Ball, and the said Alexander Robertson, John Freer Blacklock, William McBurney, and William J. Ball having obtained an allowance of appeal, and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said Caroline Carson, citing and admonishing her to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next.

Now the condition of the above obligation is such, that if the said William McBurney shall prosecute the said appeal to effect and answer all damages and costs, if he, the said William McBurney, fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

WILLIAM McBURNEY.
JOHN S. FANLEY.

Sealed and delivered in presence of—

DANIEL HORLBECK,
C. C. C. U. S., for So. Ca.

Approved by—

GEORGE S. BRYAN,
U. S. Judge, Dist. of So. Ca.

14 MAY, 1872.

Circuit court of the United States, district of South Carolina, fourth Circuit. In equity.

Citation.

CAROLINE CARSON *vs.* ALEXANDER ROBERTSON, JOHN FREER Blacklock, William McBurney, Elias N. Ball, William J. Ball, William Carson, and James Carson.	Bill for account, injunction, relief. Citation to appeal upon decree thereon.

To Caroline Carson greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, on the first Monday in December next, pursuant to a claim and allowance of appeal, filed in the circuit court of the United States, for the district of South Carolina, wherein Alexander Robertson, John Freer Blacklock, William McBurney, and William J. Ball, (the said Elias N. Ball, William Carson, and James P. Carson, named in the subpœna to the bill not having been served, nor having appeared or answered thereto, and that the said Elias N. Ball having since deceased, and his representatives not having been made parties thereto,) to show cause if any there be, why the decree

of the said appeal mentioned should not be corrected and speedy justice in that behalf.

Witness the Honorable George S. Bryan, one of the judges of the circuit court of the United States, for the district of South Carolina, the 14th day of May, in the year of our Lord eighteen hundred and seventy-two.

GEORGE S. BRYAN,
U. S. Judge, Dist. of So. Ca.

14 MAY, 1872.

We acknowledge service of a copy of this paper, May 14th, 1872.
MAGRATH & LOWNDES,
Solicitors of Caroline Carson.

United States circuit court for South Carolina.

I, Daniel Horlbeck, clerk of the circuit court of the United States for South Carolina, do hereby certify that the accompanying thirty-seven pages of writing are a full and true copy of the supplemental record and proceedings in the said circuit court, in the cause of Caroline Carson, (complainant,) appellee, and Alexander Robertson *et al.*, (respondents,) appellants, now on appeal from the circuit court to the Supreme Court of the United States.

In witness whereof, I have hereunto set my hand and affixed the seal of the said circuit court at Charleston, this thirty-first day of July, anno Domini eighteen hundred and seventy-two.

[SEAL.]

DAN. HORLBECK,
C. C. C. U. S. for S. C.

Supplemental transcript of record and proceedings of the circuit court of U. S. for South Carolina district, fourth circuit, in equity, on an appeal from decree of said court for complainant.

THE UNITED STATES OF AMERICA,
District of South Carolina, Circuit Court, Fourth Circuit:

Alexander Robertson, John Freer Blacklock, William McBurney, Elias N. Ball, William J. Ball, William Carson, James P. Carson. McCrady & Son, sol's for Wm. McBurney; Simons & Simons, sol's for Wm. J. Ball; B. H. Rutledge, esq., sol'rs for Jno. F. Blacklock; H. E. Young, esq., for Alex'r Robertson.

Affidavit of Ja's Lowndes.

THE UNITED STATES OF AMERICA,
Fourth Circuit, District of South Carolina:

In the circuit court. In equity.

CAROLINE CARSON
vs.
ALEXANDER ROBERTSON ET AL.

Personally appeared before me James Lowndes, who being duly

sworn, deposes that, as counsel for the complainant, he put in evidence in this cause a certified copy of the mortgage of Dean Hall, by Elias N. Ball, to Alexander Robertson and John F. Blacklock, executors, dated 2d of March, 1857.

JAMES LOWNDES,
EDWARD McCRADY, JR.,
Notary Public.

Order of court to replace copy mortgage of E. N. Ball to ex'rs of Carson.

THE UNITED STATES OF AMERICA,
Fourth Circuit, District of South Carolina:

In the circuit court. In equity.

CAROLINE CARSON
vs.
ALEXANDER ROBERTSON ET AL.

On hearing the affidavit filed in this matter, and on motion of Magrath & Lowndes, complainant's solicitors, it is ordered that the complainant have leave to replace on the file of the court, as a part of the record in this cause a copy of the mortgage of Elias N. Ball, to Alexander Robertson and John F. Blacklock, executors, of Dean Hall plantation, and that the same stand on the file of the court as a part of the original record of the cause.

GEO. S. BRYAN,
U. S. Judge, Dist. of S. C.

Filed 31 July, 1872.

Mortgage of Dean Hall.

To all whom these presents may concern, I, Elias N. Ball, of Charleston, in the State aforesaid, send greeting:

Whereas I, the said Elias N. Ball, in and by five certain bonds or obligations, bearing date the , stand firmly held and bound unto Alexander Robertson and John F. Blacklock, executors of the last will and testament of William A. Carson, deceased, in the penal sum of seventy thousand dollars, viz: by three of said bonds in the penal sum of eighteen thousand dollars each, and by the other two, in the penal sum of eight thousand dollars, conditioned for the payment of the full and just sum of thirty-five thousand dollars, viz: Three of said bonds conditioned for the payment of nine thousand dollars each, and the other two conditioned for the payment of four thousand dollars each, in five eaqual instalments, the first instalment on the 14th day of January, eighteen hundred and fifty-eight, and the remaining four instalments annually thereafter, with legal interest, from the 14th day of January, eighteen hundred fifty-

seven, payable annually, on the whole or such part of the principal as shall from time to time remain upaid, as in and by the said bonds and condition thereof, reference being thereunto had, will more fully appear.

Now, know all men, that I, the said Elias N. Ball, in consideration of the said debt and sum of money aforesaid, and for the better securing of the payment thereof to the said Alexander Robertson and John F. Blacklock, executors aforesaid, according to the condition of the said bond, and also in consideration of the further sum of three dollars to me, the said Elias N. Ball, in hand well and truly paid by the said Alexander Robertson and John F. Blacklock, executors aforesaid, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, the said have granted, bargained, and sold, and released, and by these presents do grant, bargain, sell, and release unto the said Alexander Robertson and John F. Blacklock, executors aforesaid, all that plantation or tract of land known as Dean Hall, situate, lying and being on Cooper river, St. Johns parish, Berkley, in the district of Charleston, and State aforesaid, butting and bounding to the east of Cooper river, to the northwest on lands formerly of William Harleston, now of John Harleston and Dr. William Moultrie, to the west on White Hall plantation, hereinafter mentioned, to the southwest on Back river, and to the south on lands formerly of Isaas E. Holmes, now of , having such forms, dimensions and discriptive marks as are represented on a plat thereof made by Henry Ravenel, surveyor, in March, 1827, and containing twenty-six hundred acres, be the same more or less; also all that tract of land situate in the same parish aforesaid, known as White Hall, butting and bounding to the east on Dean Hall plantation aforesaid, to the northeast on lands of John Harleston and Dr. William Moultrie, to the northwest on lands formerly of Hugh Sumton Ball, esquire, deceased, now of , and to the southwest on lands formerly of John C. Ball, and lately of William Ball, esquire, deceased, having such forms, dimentions and descriptive marks as are represented on a plat made by R. J. Pinkney, surveyor, in April, 1837, and containing five hundred and twenty-six 23-100 acres, be the same more or less.

Also all that parcel of land in the parish aforesaid, containing thirty-five 20-100 acres, bounding to the north and east on Chicken creek, to the south and west on Medway, on Back River, as the same was granted to the said William A. Carson by the State of South Carolina, by a grant bearing date the fourth day of September, eighteen hundred and forty-three, together with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging, or in anywise incident or appertaining, to have and to hold all and singular the said premises unto the said Alexander Robertson and John F. Blacklock, executors aforesaid, their heirs and assigns, forever. And I, the said Elias N. Ball, do hereby bind myself, my heirs, executors, and administrators, to warrant and forever defend all and singular the said premises unto the said Alexander Robertson and John F. Black-

lock, executors aforesaid, their heirs and assigns, from and against me and my heirs, executors, administrators, and all other persons lawfully claiming or to claim the same, or any part thereof, provided, always, nevertheless, and it is the true intent and meaning of the parties to these presents that if I, the said Elias N. Ball, do and shall well and truly pay, or cause to be paid, unto the said Alexander Robertson and John F. Blacklock, executors aforesaid, the debt or sum of money aforesaid, with the interest thereon, if any shall be due, according to the true intent and meaning of the said bond and condition thereunto written, then this deed of bargain and sale shall cease, determine, and be utterly null and void; otherwise it shall remain in full force and virtue. And it is agreed by and between the said parties that the said Elias N. Ball is to hold and enjoy the said premises until default of payment shall be made.

Witness my hand and seal, this second day of March, in the year of our Lord one thousand eight hundred and fifty-seven, and in the eighty-first year of the sovereignty and independence of the United States of America.

ELIAS N. BALL.

Signed, sealed and delivered in presence of—
EDWARD M. THORNTON,
HENRY L. BURNS.

Satisfaction of mortgage.

(Endorsed:) The bonds that this mortgage was given to secure having been paid, I declare the same fully satisfied.

ALEX. ROBERTSON, *Ex'or.*

Witness—
HENRY TRESCOTT,
Register M. C.
JULY 21, 1866.

(Endorsed;) Mesne conveyance office, Charleston county. The within deed and satisfaction endorsed thereon, is a true and correct copy of a deed recorded in book V, No. 13, page 496, on the 11th day of March, 1857. Henry Prescott, Register M. C.

Affidavit of H. E. Young as to lost copy of accounts.

THE STATE OF SOUTH CAROLINA,
Charleston Co:

Circuit court U. S., So. Ca. Dist. In equity.

IN RE CAROLINE CARSON
vs.
ALEXANDER ROBERTSON.

Personally before me made oath, Henry E. Young, of the firm of Rutledge & Young, that while he cannot speak with perfect assurance

of events passed so long ago, yet he feels confident that the accounts referred to in the answer of the defendant, Alexander Robertson, as exhibit A, were filed in said circuit court at the same time said answer was filed.

That he is confirmed in his recollection of the matter by the memory of his partner, B. H. Rutledge, by the practice of his office, and furthermore, that there are now in his office the copy of said accounts, which were filed in the State courts, and which were obtained there in order to have copies made for the said answer of said defendant in the said cause in said circuit court of the United States. Till the doubt was suggested of these accounts having been filed, deponent was perfectly confident that they had been, and such also was the confidence of B. H. Rutledge.

H. E. YOUNG.

Sworn to before me this 17 of July, 1872.

JENNINGS W. PERRY, *Not. Pub.*

Affidavit of James Lowndes as to lost copy of accounts.

THE UNITED STATES OF AMERICA,
District of South Carolina, Fourth Circuit:

In equity.

CAROLINE CARSON
vs.
ALEXANDER ROBERTSON ET AL.

Personally appeared before me James Lowndes, one of the solicitors in the cause, who, being duly sworn, deposed that, in the argument of this cause, he distinctly referred to the accounts filed as appendix "A," of Mr. Robertson's answer, as a part of the record in the cause, and as evidence for the complainant; that he moreover gave to the counsel of Mr. McBurney copies of his (deponent's) printed argument in the cause; that on page 7 of that argument, distinct reference is made to the account in question as being on file, although they are there said to be on file with the bill, which is plainly a mistake of expression; that neither at the hearing, or at any time thereafter, was any objection made to the reference to the accounts, as evidence by any party to the suit, and deponent always supposed and believed that the said accounts were a part of the record.

JAMES LOWNDES.

Sworn to 17th of July, 1872.

M. E. HUTCHINSON, *Not. Pub.*

Order to substitute copy of accounts.

UNITED STATES OF AMERICA,
South Carolina District:

In the circuit court. In equity.

CAROLINE CARSON
vs.
ALEXANDER ROBERTSON ET AL.

The affidavits of Henry E. Young and James Lowndes, in regard to the accounts of the defendant, Alex. Robertson, mentioned in his answer as exhibit "A," having been read, it is, on motion of H. E. Young, sol'r for Alexander Robertson, defendant, ordered that he have leave to substitute other copies of the accounts of said defendant for those believed to have been originally filed therewith as exhibit "A," and lost or misplaced, and that the same do stand on the file of the court as a part of the original record of the cause.

GEO. S. BRYAN,
U. S. Judge D. S. Ca.

Filed 31 July, 1872.

Account of A. Robertson and J. F. Blacklock, executors.

ESTATE OF WILLIAM A. CARSON
in account with
ALEXANDER ROBERTSON and J. F. BLACKLOCK, *executors.*

1856.	*Debits.*	
Aug. 17.	To paid Robertson & Blacklock & Co., attested acc't for balance due them by testator, per their acc't book, rendered herewith	$25,106 04
Sept. 2.	St. Michael's Church bill, 11.00; 4. Mrs. Carson for self and family, 50	61 00
15.	Paid F. Windham for 108 cords wood for Dean Hall mills	378 00
27.	Mrs. Carson, self and family, 50; Box & Posi, bill tuition Wm. & J. P. C., 54.87.	104 87
Oct. 2.	6 mos. ass't on pew St. Michael's Church, due 1st inst.	14 60
20.	Mrs. C. Carson, for self and family	50 00
30.	F. Windham, for 108 cords wood for Dean Hall mills	378 00
30.	Miss E. S. Smith, for 1 yr's int. on testator's bond for $3,500	245 00
31.	Bee & Tylee, for sundry articles, wire, &c., for mills	412 23
Nov. 3.	Road tax, for Sullivan's Island, 6.00; Geo. Bursh, ordinary, 16	22 00

19.	John May's acc't, 55.00; 26. Lockwood & Johnson, repairing mills, 177.59.....	$232 59
29.	Mrs. Carson, self and family.....	200 00
Dec. 3.	1 mos. insurance on Dean Hall mills, 10,500, at 1½ per ct.....	157 50
10.	F. Windham, for 126 cords lightwood for same.....	441 00
19.	H. Bischoff, provisions, boat hands, 17.46; Jan. 9, 1857, Lachicotte, miller, 100.....	117 46
1857.		
Jan. 14.	J. D. Murray, overseer, 100; 15. Tom. Bell for rice barrels, 51.25.....	151 25
15.	R. Townsend, rice barrels, 60.00; Box & Posi, tuition of Wm. & J. P. C., 52.12...	112 12
17	Assessment for widening street on Sullivan's Island.....	25 00
	Dr. T. L. Ogier, medical acc't.....	356 00
20.	Robertson, B. & Co., attested acc't for bal. schr. A. L. Conkling's acc't.....	5,273 78
30.	S. N. & J. W. Hart's attes. acc't, 68.75; Feb. 2, P. Lachicotte in full as miller, 100	168 75
Feb. 4.	Plenty & Benbon, rice barrels, 20.00; B. H. Read, for bbls & staves, 230.83.....	250 83
11.	Testator's note in Bk. State S. C., dated 3 June, with int.....	409 00
	Testator's note in Bk. State S. C., dated 28 May, with int.....	2,050 50
	Testator's note in Bk. State S. C., dated 9 June, with int.....	2,050 50
16.	Mrs. & Mr. R. Roper, in full prin. & int., testator's bond to her.....	3,359 30
	John D. Murray, in full of wages as overseer, and all demands.....	900 00
18.	De Saussure & Son, att'ys Eliza Rutledge, in full, prin. & int., test. bond.....	1,911 98
	De Saussure & Son, att'ys Eliza Rutledge, in full, prin. & int., test. bond.....	3,409 48
Feb. 18.	Paid H. A. De Saussure, ex'or M. S. Boone, ex'ix, in full, prin. & int., test. bond.....	2,237 45
	Paid H. A. De Saussure, ex'or M. S Boone, ex'ix, in full, prin. and int., test. bond..	459 44
	Paid H. A. De Saussure, in full, prin. & int., test. bond to him.....	2,160 64
	Paid Wm. Binnie, ex'or John Black, in full, prin. & int., test. bond.....	15,985 83
19.	Paid J. K. Robinson in full, prin. and int., test. bond to J. W. Gray, master in equity	4,218 78
20.	Paid Colis Kelton's bill, 10.75; 21. Mrs. M. H. Pyatt in full, prin. and int. of test. bond assg. her.....	10,362 46

21.	Paid Miss Mary Crisp in full, prin. & int., of testator's bond assigned her.....	$3,145 27
13.	Paid Stebbins & Miller in full "test. note" & protest.....	350 00
23.	Paid Miss E. S. Smith "bond" & protest...	3,596 64
25.	Paid H. Gourdin, ex'or Dr. Elias Ball, bond & protest.....	3,702 20
March 4.	Paid Mount Pleasant Ferry Co's attest acc't $19.47 & 26.89.....	46 36
	Paid testator's subscription to Farmer & Planter.....	4 20
11.	Pecere C. Kane & Edith Kane in full of her legacy under the will of the late Mrs. Elizabeth Carson	2,000 00
12.	Paid Ravenel & Co. in full test. bond due 1 Jan., 1856, $1,912.50, & int. to date 159.54	2,072 04
	Paid T. W. Easterling, gen. tax, 1856; direct tax 1857, for St. Johns Berkley.....	215 96
17.	Paid J. Gadsden for rice barrels.....	58 63
26.	Paid Lockwood & J. attested acc'ts, $783.83, 74.74 & 13.83.....	822 40
28.	Wm. Calden attest acc't, 492.19; C. H. West & Sons attest acc't, 809.92. 187.63, 997.55.....	1,489 74
30.	Paid Klink & Wickenberg, 233.58; Klink & W. for family, 98.05.....	331 63
	Paid Mills, Beach & Co., acc't family, 34.84; Mills, B. & C., attest acc't, 75.98.....	110 82
	Paid C. Rame, attest acc't, 26.82,; A. Della Jone, attest acc't, 42.28	69 10
31.	Paid P. V. Dibble, attest acc't, 18.50: E. M. Carey's attest acc't, 50.06.....	68 58
April 1.	Paid three mos. assessm't, pew in St. Michael's Church to 1st Jan'y.....	7 00
7.	Paid Edgertons and Richards attest acc't, 119.20; 8. R. A. Pringle attest acc't, 80.03	119 23
	Paid R. A. Pringle acc't for family, 27.75; 14. P. R. Lachicotte, attest acc't, 423.50, 350.....	801 18
15.	Paid Cameron & Mustard attest acc't.....	551 22
	E. Bull's acc't for machinery & wharfage on same.....	68 29
17.	Reynolds & Co., attest acc't, 177.25; M. H. Nathan's, attest acc't, 83.50.....	260 75
18.	Paid Love & Strenge's attest acc't, 47.61; Dr. Peter Porchers' attest acc't, 25.00...	72 61
	Paid George W. Olney, acc't, 3.42; 22. Courier Office, attest acc't, 19.06.....	22 48
	Paid Courier Office acc't, 18.20; 28. Otis Phillip's attest acc't, 85.25.....	103 45

May 6.	Paid gen. tax 1856, dist. tax 1857, for Christ Church	$3 57
	Paid Hayden & Wilden, attest acc't, 28.00; Capt. S. F. Dexter's attest, 2.63	30 63
9.	Paid John Thompson & Co., attest acc't, 4.44; Petigru & King, prof. serv., 215.00	219 44
	Paid C. P. Richardson & Bro., attest acc't, 3.25; 13. Mathisen & O'Hara, attest acc't, 94.37	98 12
14.	Paid Dr. W. S. Moultrie for 14 bbls, 28.88;	
	19. B C. Lock, attest acc't, 10.33	39 21
27	Paid Charleston Standard, acc't, 17.40; June 1. Dawse and Blackman, attest acc't, 3.69	21 09
June 1.	Paid John Gravely & Co., acc't, 5.56; 8.	
	Dr. Edmund Ravenel, attest acc't, 93.00	98 56
4.	Paid Mrs. C. Carson in full of legacy bequeathed by test	2,000 00
9.	Paid Thom. O'Brian, attest acc't, 11.75; 10.	
	L. Chapin's attest acc't, 40.00	51 75
11.	Paid B. A. Rodrigues, attest acc't, 2.00; 12.	
	Charleston Marine Society, 12.76	14 75
22.	Paid Robertson, B. & Co., acc't for plantation and mill supplies	1,869 34
	Paid the trustees of Mrs. Caroline Carson, $\frac{1}{3}$ of the residue of the purchase money of the by order of the will, as per distribution as made this day between herself and her two sons, say—	
	Paid the trustees of William Carson, on third do., say—	
	In Elias N. Ball's bond for 11,000 00	
	" " " " " 9,000 00	
	" " " $\frac{1}{3}$ of 4,000 1,333 33	
	And in cash 166 67	
		21,500 00
	To paid the trustees of William Carson on third do., say—	
	In Elias N. Ball's bond for 11,000 00	
	" " " " 9,000 00	
	" " " $\frac{1}{3}$ of 4,000 1,333 33	
	And in cash 166 67	
		21,500 00
	To paid the trustees of James P. Carson, on third of residue, as aforesaid, say—	
	In Elias N. Ball's bond for 11,000 00	
	" " " " 9,000 00	
	" " " $\frac{1}{3}$ of 4,000 1,333 33	
	And in cash 166 67	
		21,500 00

	To 2½ per ct. comm's on rec'g $154,261.79, $4,606.55. 2½ per ct. on paying $172,899.65, 4,322.49	$8,929 04
	Balance due estate	2,433 10
	Total	$184,261 79

1856	*Credits.*	
Dec. 17.	Rec'd P. J. Porcher & Baya, net proceeds sales of Sch'r A. E. Conkling, per acc't sales rendered herewith "A"	$770 25
1857.		
Jan. 15.	Tom Bell, on acc't of purchase of Lear	51 24
	P. J. Porcher & Baya, net proceeds of 210 negroes, per their acc't sales rendered herewith, marked "B"	119,560 16
	Same of Dean Hall plantation, marked "C"	49,695 74
	Sale household furniture, boats, flats, mules, horses, plantation utensils, tools, &c., marked "D"	4,127 08
	Received interest that had accrued on sundry sales of estate, as follows: say on sale to D. D. Graves, 15.98; on sale to J. Harleston, 15.72; on sale to A. Robertson, 26 68; on sale to Alb. Harleston, 4.66; on sale to B. Fitzsimmons, 7.21; on sale to P. G. Porcher, 2.04; on sale to V. G. Montin, 34.46; on sale to Wm. Whaley, 10.95; on sale to Jos. W. Ford, 37.06; on sale to J. S. F. Pope, 44.04; on sale to P. R. Lachicotte, 5.74; on sale to J. A. Hume, 26,59; on sale to J. M. Hapoldt, 13.94; on sale to E. O. Cromwell, 24.42; on sale to E. N. Ball, 159.25—308.76—468.01; on sale to L. C. Blackwood, 22.38; on sale to N. J. Salmas, 10.87	770 75
	Received of Dr. Warring 8 mos. rent pew in St. Michael's Church	30 00
Mch. 11.	Received of Gov. Alston, for pew No. 10, sold to him	500 00
31.	Received of K. S. Ball, for 135 len. rice flour, had in July, 1854	45 50
May 11.	Received of P. J. Porcher & Baya, net proceeds sale of Sarah and her three children, per acc't sales marked "E"	1,194 00
June 3.	Rec'd of T. J. Simons & Sons, am't due testator as sec'ry and treas. of Strawberry Club	39 69

16.	P. J. Porcher and Baya, net proceeds of sale of old Frank, per their acc't sales marked "F"		$181 57
	E. N. Ball for 6 lbs. small rice		93 00
22.	Robertson, Blacklock & Co., net proceeds of 90½ bbls. of rice, per their acc't sales, marked "G"		1,810 76
	Same amount collected for 376 3-2 bbls., furnished 54 bbls. coopered, toll on 52 3-2 bbls. rice, (crop of 1855,) pounded at Dean Hall Mill, and freight 511 3-2 bbls. rice sch'r A. E. Conklin, marked "H"		1,480 83
	Amt. collected for 1,162 9-2 bbls., furnished 164 bbls. coopered, and toll on 1,326 9-2 bbls. rice pounded at Dean Hall Mill, 3,396 13 less 2½ per ct. commiss. on collecting same, per settlement "I" 84 90,		3,311 23
			$184,261 81
	Balance due estate brought down		$ 2,433 10

N. B. The foregoing balance of 2,433.10 consists, as follows:

Say Mrs. Caroline Carson bond for	1,000 00
Say James S. Petigru	385 00
And in cash	1,048 10
	$2,433 10

There are also 8 shares So. W. R. R. stock standing in testator's name in the books of the bank.

Audited June 25, 1857.

Recorded book 1, page 245.

ALEX. ROBERTSON,
Executor.

In court of ordinary.

STATE OF SOUTH CAROLINA,
Charleston District:

I do hereby certify the foregoing to be and contain a true and correct copy of the annual account of the estate of William A. Carson, late of Charleston, planter, deceased; filed and recorded in this court, on the day and year above set forth.

Given under my hand and seal of office, at Charleston, this twentieth day of July, eighteen hundred and sixty-six.

[SEAL.] GEORGE BUIST,
Probate Judge.

ESTATE OF COL. WILLIAM A. CARSON
in acc't with
ALEXANDER ROBERTSON & JOHN F. BLACKLOCK, *Executors.*

1857.	*Debits.*	
June 26.	To George Buist, ordinary, 25.00; DeGidding, 110.60	$135 60
July 1.	Wm. Semmuts, acc't 141 00; 2. Mercury office, ex'ors notice, 15.60	156 60
13.	Mathiesin, O. H. & Co., clothes for Frank, 10.00; W. E. Adams, 3.00	13 00
21.	Evening News, 19.05; 23. J. M. Happold, acc't 950	28 55
Aug. 6.	To Charles Tements, acc't 132.00; 22. W. F. White, marble slab, &c., 65.70	197 70
Nov. 7.	Gowan & Son, acc't 10.00; Dec. 22, De O. C. Rhame, acc't 82.50	92 50
1858.		
Jan. 25.	Henry Octjues, acc't 26.12; Feb. 4. D. C. G. White's acc't 74.00	100 12
Feb. 10.	Mathisen, O. H. & Co., 19.75; 12. Stoney & Wiltberger, attes. acc't 3.25	20 00
	2½ per ct. comm's on rec. 28.95; less balance of last year's acc't 2,433.106—462.70 @ 2½ per ct.,—$11.51 2½ com'on on pay, 747.07. 18.64	30 24
	Balance carried down	2,118 49
		$2,895 80

1857.	*Credits.*	
June 22.	Balance to acc't rendered to ordinary	$2,433 10
July 1.	Received from Sement for rice flour, $98.25. Charles Sennent for the same $18.50	179 75
1858.		
June 30.	Mrs. Carson 1 yrs. inst. due, 2 inst. on bond of 1,000	70 00
June 4.	D. C. G. White Mill acc't	24 00
April 16.	Amt. on div. to July, 1857, on 8 shares S. W. R. R. Bank	138 00
	6 mos. 1 Jan'r last	24 00
May 14.	J. L. Petegru, for inst. on his bonds taken up	26 95
		$2,895 80
	Balance bro't down due estate	$2,118 49

N. B.—The foregoing balance of $2,118.49 consists of Mrs. Caroline Carson's bond of	$1,000 00
And in cash of	1,118 49
	$2,118 49

J. F. BLACKLOCK,
Executor.

Audited and approved June 17th, 1858.
Record book K, page 18.

In court of ordinary.

THE STATE OF SOUTH CAROLINA.
Charleston District:

I do hereby certify the foregoing page to be and contain a true and correct copy of the annual account of the estate of Col. William A. Carson, late of Charleston, planter, deceased, filed and recorded in this court, on the day and year above set forth.

Given under my hand and seal of office, at Charleston, this 20th day of July, anno Domini eighteen hundred and sixty-six.

[SEAL.] GEORGE BUIST,
Judge of Probate.

ESTATE OF COL. WILLIAM A. CARSON
in account with
ALEX ROBERTSON AND JOHN F. BLACKLOCK, *executors.*

1858.	*Debits.*	
June 17.	To paid ordinary's fees, 4.00	$4 00
	Jan. 28, 1859, Hayne & Miles, in full of judg't against Sam. Burke, the late Col. Carson being security, 445.64	445 64
May 30.	P. Lachicotte, bal. due him as engineer and miller in 1857	100 00
July 1.	H. R. De Leon for 1,200, city 6 per ct. stock	1,200 00
	2½ per ct. commiss. on receiving 2,335.62, less bal. of last years acc't, 2,118.49, —217.13	5 42
	2½ per ct. commission on paying 1,749.64.	43 47
	Balance consisting of bal. due on Mrs. C. Carson's fund $481.13, and cash 55.69..	536 82
		$2,335 62

1858.	*Credits.*	
June 5.	Ballance per acc't rendered the ordinary.	$2,118 49
July 3.	Rec'd 6 mos. div. on 8 shares in S. W. R. R. Bank.....	38 00
1859.		
Jan. 6.	Rec'd 6 mos. div. on 8 shares in S. W. R. R. Bank.....	40 00
Mch. 7.	Of Mrs. Carson in full of int's on her bond to date.....	81 13
July 1.	6 mos. div. on 8 shares in S. W. R. R. Bank.....	40 00
	1 qrtr's int. on $1,200 city stock.....	18 00
		$2,335 62

J. F. BLACKLOCK,
Executor.

Audited and approved July 18, 1859.
Recorded book K, page, 420.

In court of ordinary.

THE STATE OF SOUTH CAROLINA,
Charleston District:

I do hereby certify the foregoing page to be and contain a true and correct copy of the annual account of the estate of Col. W'm A. Carson, late of Charleston, planter, deceased; filed and recorded in this court on the day and year above set forth.

Given under my hand and seal of office, at Charleston, the 20th day of July, anno Domini eighteen hundred and sixty-six.

[SEAL.] GEORGE BUIST,
(U. S. Rev. stamps, 5 cts.) *Judge of Probate.*

EST. OF COL. W'M CARSON
in account with
ALEX. ROBERTSON AND JOHN F. BLACKLOCK, *executors.*

1859.	*Debits.*		
July 20.	Paid Geo. Buist, ordinary audititing account.....		$2 50
July 11.	2½ per ct. commission,.....	$730 50	
	Less balance of last years acc't....	536 82	
		$193 68	4 84
	Balance.....		723 16
			$730 50

1859.	*Credits.*	
July 1.	Balance per acc't rendered to ordinary....	$536 82
Jan. 6.	6 mos. div. on 8 shares in S. W. R. R. Bank.....	40 00
	2 qrtr's int. on 1,200 city 6 per ct.....	36 00
May 11	Mrs. Carson, one years int. due on her bond of 481.18.....	33 68
July 3.	2 qrtr's interest on 1,200 city 6 per ct.....	36 00
10.	6 mos. div. on 8 old and 8 new shares, S. W. R. R. Bk.....	40 00
		$730 50

J. F BLACKLOCK, *Executor.*

Audited and approved July 14, 1860.
Record book L, page 219.

In court of ordinary.

THE STATE OF SOUTH CAROLINA,
Charleston District:

I do hereby certify the foregoing to be and contain a true and correct copy of the annual account of the estate of Col. Wm. A. Carson, late of Charleston, planter, deceased; filed and recorded in this court on the day and year above set forth.

Given under my hand and seal of office, at Charleston, this 20th day of July, A. D. eighteen hundred and sixty-six.

[SEAL.]
(U. S. Rev. stamp.)

GEORGE BUIST,
Judge of Probate.

ESTATE WM. A. CARSON
in account with
A. ROBERTSON, *executor.*

1862.	*Debits.*	
Nov. 13.	Paid W. D. River's conf. war tax, for Christ Ch. parish.....	$12 50
1863.		
July 10.	General tax 1862, for Lt. P. & Lt. M.....	2 04
1864.		
Mch. 11.	Am't fund in conf. 4 per ct., as per notice, bank Charleston.....	800 00
28.	General tax 1863, for Lt. P. & Lt. M.....	9 74
Dec. 19.	Conf. war tax in 4 per ct., and in cash.....	77 80
	Bal. due estate in conf. currency.....	236 91
		$1,138 99

1862.	*Credits.*	
July 11.	Balance at credit of est. this day.....	$546 99
Oct. 7.	1 qrtr's int. on 1,200 city 6 per ct., 18.00; Jan. 3, 1863, same, 18.00.....	36 00
1863.		
Jan. 15.	6 mos. div. on 8 old and 8 new shares, S. W. R. R. Bank.....	60 00
Aug. 2.	1 qrtr's int. on 1,200 city 6 per ct., 18.00; July 31, 1 qrtr's int. on same, 18.00....	36 00
1864.		
Jan. 6.	2 qrtr's int. on 1,200 city 6 per ct., 36.00; Jan. 16, 12 mos. int. on S. W. R. R. Bk. 164.00.....	200 00
April 8.	1 qrtr's int. on 1,200, city 6 per ct., 36.00; July 18, 1 qrtr's int. on city 6 per ct., 18.00.....	36 00
Aug. 3.	6 mos. div. on R. R. & Bk. stock, 78.00; Nov. 14, 1 qrtr's int. on city 6 per ct. 18.	96 00
1865.		
Feb. 5.	6 mos. div. on R. R. Bk. Stock.....	128 00
		$1,138 99

1865.
Dec. 1. Bal. due est. this day in conf. currency... $236 91

E. E. Charleston, July 6, 1866.

A. ROBERTSON, *Executor.*

Audited and approved July 6, 1866.
Recorded book "N," page 165.

In court of ordinary.

THE STATE OF SOUTH CAROLINA,
Charleston district:

I do hereby certify the foregoing pages to be and contain a true and correct copy of the original annual account of the estate of Wm. A. Carson, late of Charleston, planter, deceased, filed and recorded in this court on the day and year above set forth.

Given under my hand and seal of office, at Charleston, this 23d day of July, anno Domini eighteen hundred and sixty-six.

[SEAL.] GEORGE BUIST,
(Rev. stamp, 5 cts.) *Judge of Probate.*

MRS. CAROLINE CARSON,
in account with
A. ROBERTSON, *executor Wm. A. Carson.*

1862.	*Debits.*	
Nov. 1.	To this am't at your debit, with Robertson, Blacklock & Co., as per their ballance sheet of this date.....	$53 81
20.	Paid conf. war tax, Lt. P. & Lt. M., 107.40	107 40
1863.		
May 5.	Paid H. H. De Leon for 500 conf. 8 per ct. bonds a 103, 515.00. Oct. 20, con. war tax 45.00.....	560 00
1864.		
Mch 5.	Paid tax on income, 77.00 Ma'ch 18, funded in 4 per ct. certif., 200.00.....	277 00
	Paid bonds, $5,000, a 5 per ct. per an., 5,775	5,775 00
Dec. 19.	Paid conf. tax, $1,000, a 65 per ct., 650, and in cash 205.00.....	855 00
		$7,628 21
	Commissions on rec'ng $7,479.14 a 2½ per ct.....$186.98	
	Commissions on paying $7,628.21 a 2½ per ct..... 190.70	377 68
		$8,005 89

1863.	*Credits.*	
Jan. 6.	By 19ths int. on 160 city 6 per ct., 2.40. Ap. 2d, 1 qrs. int. on 160 city 6 per ct., 2.40.....	$4 80
Ap'l 23.	Rec'd in full of E. N. Ball int. and int. on int. on his bonds of $11,000 and 9,000, and on her ⅓ portion in his of $4,000, say 1,333.33.....	5,072 29
July 31.	1 qrs. int. on 160 city 6 per ct., 2.40; Jan. 6, 1864, 2 qrs. int. on same, 4.80.....	7 20
Mch 24.	Int. to Jan. 1st on $20,500 conf. 8 per ct., 1,127.73. Ap. 8, 1 qrs. int. on 160 city 6 per ct., 2.40.....	1,130 13
July 20.	6 mos. int. on 20,500 conf. 8 per ct., 820.00; July 21, int. on 5,500 conf. 6 per ct., 144.92.....	964 92
Nov. 14.	2 q'rs int. on 160 city 6 per ct., 4.80; Jan. 14, 1865, rec'd for 200 conf. 4 per ct., a 65, 130.00.....	134 80
	6 mos. int. on $5,500 conf. 6 per ct.....	165 00
		$7,479 14

Amount brought forward.....	$7,479 14
Balance due executor this day.....	526 75
	$8,005 89

E. E. CHARLESTON, July 6, 1866.

A. ROBERTSON, *Executor.*

Audited and approved July 6, 1866.
Recorded book N, page 165.

In court of ordinary.

THE STATE OF SOUTH CAROLINA,
Charleston County:

I do hereby certify the foregoing pages to be and contain a true and correct copy of the original account of the estate of William A. Carson, late of Charleston, planter, deceased, for Mrs. Caroline Carson, filed and recorded in this court on the day and year above set forth.

Given under my hand and seal of office, at Charleston, this twenty-third day of July, anno Domini eighteen hundred and sixty-six.

[SEAL.] GEORGE BUIST,
(Rev. stamp, 5 cts.) *Judge of Probate.*

MRS. CAROLINE CARSON
in account with
ALEXANDER ROBERTSON, *Trustee.*

1863. *Debits.*

April 29.	To paid H. H. De Leon for $8,000 conf. bonds a 103 (8 per ct.).....	$8,240 00
30.	To paid H. H. DeLeon for 12,000 conf. bonds a 100 (8 per ct.,).....	12,360 00
	To commission on paying $21,000 a 2½ per ct., 515.00; to commission on receiving $21.336.80 a 2½ per ct., 633.42.....	1,048 42
		$21,648 42

1862. *Credits.*

Nov. 1.	By this am't at y'r credit, on books of Robertson, Blacklock & Co., as per their balance sheet this day.....	3 47
1863.		
April 23.	By received of E. N. Ball, in full of the principal of his two bonds of 11,000 and 9,000, and for your one-third (⅓) int. in his bond of 4,000, say $1,333.33.....	21,333 33
		$21,336 80

Amount brought forward.....	$21,336 80
Balance carried down and due trustee,	311 62
	$21,648 42

E. E. Charleston, July 6, 1866.

A. ROBERTSON, *Trustee.*

Audited and approved July 6, 1866.
Recorded book " N," page 166.

In court of ordinary.

THE STATE OF SOUTH CAROLINA,
Charleston District:

I do hereby certify the foregoing to be and contain a true and correct copy of the original annual account of the estate of William A. Carson, late of Charleston, planter, deceased, for Mrs. Caroline Carson, filed and recorded in this court on the day and year above set forth.

Given under my hand and seal of office at Charleston, this twenthird day of July, anno Domini eighteen hundred and sixty-six.

[SEAL.] GEORGE BUIST,
Judge of Probate.

WILLIAM AND JAMES P. CARSON, *minors,*
in account with
A. ROBERTSON, *executor Wm. A. Carson, and trustee.*

	Debits.	
1863.		
Mch. 7.	To paid attendance and funeral expenses on Phœbe.....	$64 00
May 5.	To paid H. H. De Leon for 5,000 conf. 8 per ct. bonds a 103.....	5,150 00
30.	To paid city tax 1863, July 10, gen. tax St. P. & I. M., 58.24.....	58 24
Oct. 20.	To paid packing wine, 32.50; freight, 17.50; drayage, 3.10.....	53 10
1864.		
Feb. 29.	To paid conf. tax on income, 1863, 20.00; Aug. 1, city tax, 5.00.....	25 00
	To paid sundry payments to old Matilda to Feb., 1865, for support.....	151 00
	To paid nursing, &c. for Phœbe, not charged	
		$5,545 34
	2½ per ct. commissions on rec'g $6,006.18, $150.15; 2⅕ per ct. commissions on paying 5,545.34, $138.63.....	288 78
	To bal. carried down to credit in confed. currency.....	172 06
		$6,006 18

1862.	*Credits.*	
Nov. 1.	By this am't at the credit of this acct. on books of Robertson, B. & Co., as per their ballance sheet this day.....	$202 19
	6 mo's int. on State bond, 30.00; Jan. 6, 1863, ¼ div. on 1,400 city 6 per ct., 21.00.....	51 00
1863.		
Jan. 15.	6 mo's int. on State bonds, 30.00; April 1, q'r's div. on 1,400 city, 6 per ct., 21.00..	51 00
July 31.	1 q'r's int. on 1,400 city 6 per ct., 21.00; Jan, 6, 1864, 2 q'r's div. on 1,400 city 6 per ct.....	63 00
1864.		
Mch. 23.	Int. on 5,000 8 per ct conf. bonds, 277.30, Ap. 8, 1 q'r's div. on 1,400 city 6 per ct., 21.00.....	298 30
July 27.	By 1 q'r's int. on 1,400 city 6 per ct., 21.00; 6 mo's int. on 5,000 conf. 8 per ct.....	221 00
	By 18 mo's int. on 1,000 State bonds, 20 per ct. premium, 108.00; Nov. 14, 1 q'r's int. city 6 per ct., 21.00.....	129 00
1863		
Ap'l 23.	By E. N. Ball, in full, principal of 4,000 and 990.69 int. on bond.....	490 69
		$6,006 18

E. E. Charleston, July 6, 1866.

A. ROBERTSON, *Trustee.*

Audited and approved July 6th, 1866.
Recorded book "N," page 167.

In court of ordinary.

THE STATE OF SOUTH CAROLINA,
Charleston District:

I do hereby certify the foregoing page to be and contain a true and correct copy of the original account of the estate of Wm. A. Carson, late of Charleston, planter, deceased, for William and James P. Carson, minors, filed and recorded in this court on the day and year above set forth.

Given under my hand and seal of office at Charleston, this twenty-third day of July, anno Domini eighteen hundred and sixty-six.

[SEAL.]

GEORGE BUIST,
Judge of Probate.

MRS. C. CARSON, *guardian of James P. Carson, a minor,*
in account with
A. ROBERTSON, *executor Wm. A. Carson.*

1862.	*Debits.*	
Nov. 1.	To this am't at debit, as per balance sheet of books of Robertson, Blacklock & Co., of this date	$260 00
1863.		
April 18.	To paid him 150.00; June 8, paid him 100.00; July 2nd, paid him 75	325 00
July 7.	To paid him 500; Aug. 12, to paid him 50; Sept. 1, 25	575 00
Oct. 15.	To paid him 50; Oct., conf. tax, 18; Nov. 20, to paid 75	143 00
1864.		
Feb. 22.	To paid 200; Mch. 30, paid him for conf. 6 per ct. 2,000 a 50 per ct. premium	2,510 00
July 28.	To quinine and underclothing, 250.00; H. D. Lesanne's bill, 166.38	416 38
Sep. 1.	To paid him 110.00; Dec., 1862, paid him 100.00; Jan. 2, 1863, paid him 200.00	410 00
		4,639 38
	2½ per ct. com's on paying $4,639.38, 115.98; 2½ per ct. com's on receiving 3,123.95, 78.09	194 07
		$4,833 45
1863.	*Credits.*	
June. 23.	By rec. of trustees of James P. Carson, 3 yr's allowance for his support and education, a 1,000 per annum	$3,000 00
1864.		
June. 21.	By rec'd int. to 1 inst. on 2,200 conf. 6 per ct. stock	57 95
1865.		
Jan. 15.	By rec'd 6 mo's int. on $2,200 conf. 6 per ct. stock	66 00
		$3,123 95
	Balance carried down	1,709 50
		$4,833 45

E. E. Charleston, 6 July, 1866.

A. ROBERTSON, *executor.*

Audited and approved July 6th, 1866.
Recorded book "N," page 167.

In court of ordinary.

THE STATE OF SOUTH CAROLINA,
Charleston District:

I do hereby certify the foregoing page to be and contain a true and correct copy of the original annual account of the estate of William A. Carson, late of Charleston, planter, deceased, for Mrs. C. Carson, guardian of Jas. P. Carson, a minor, filed and recorded in this court on the day and year above set forth.

Given under my hand and seal of office at Charleston, this 23 day of July, anno Domini eighteen hundred and sixty-six.

[SEAL.] GEORGE BUIST,
[U. S. rev. stamp 5 cts.] *Judge of Probate.*

MRS. C. CARSON, *guardian of William Carson, a minor,*
in account with
A. ROBERTSON, *executor Wm. A. Carson.*

1862.	*Debits.*	
Nov. 1.	To this am't at debit of this ac. as per bal. sheet of Robertson, Blacklock & Co's. books of this date.....	$200 00
1863.		
June 27.	To paid Dr. H. R. Frost's bill for attendance on Brain.....	16 00
Octr. 20.	To conf. tax to July, 28.00; conf. 6 per ct. bonds 3,700 a 5 per ct. prem. 3,885.00...	3,913 00
	To commis. on paying $4,129.00, $103.22; " on receiving $3,208.51, 2½ per ct. 80.21.....	183 43
		$4,312 43
1863.	*Credits.*	
June 23.	Rec'd from trustees William Carson, 3 yrs. allow. for his support and education, a 1,000 pr. an.....	$3,000 00
1864.		
July 2.	Int. to 1st inst. on $3,700 confed. 6 per ct., 6 mos.	97 51
	" " " "	111 00
	Balance carried down.....	1,103 92
		$4,312 43

E. E. Charleston, July 6, 1866.

A. ROBERTSON,
Executor.

Audited and approved July 6, 1866.
Recorded book N, page 166.

In court of ordinary.

STATE OF SOUTH CAROLINA,
Charleston District:

I do hereby certify the foregoing to be a true and correct copy of the original account of the estate of William A. Carson, late of Charleston, planter, deceased, with Mrs. C. Carson, guardian of William Carson, a minor, filed and recorded in this court on the day and year above set forth.

Given under my hand and seal of office, at Charleston, this twenty-third day of July, anno Domini eighteen hundred and sixty-six.

[SEAL.] GEORGE BUIST,
[U. S. rev. stamp 5 cts.] *Judge of Probate.*

WILLIAM CARSON, A MINOR,
in acc't with
ALEXANDER ROBERTSON, *Trustee.*

1863. *Debits.*

Apl. 30.	To paid H. H. De Leon for $23,000 confed. 8 per ct. bonds, a 103	$23,690 00
June 22.	To paid Mrs. Carson, guardian, 3 years allowance for support and education, allowed by court of equity, $1,000 per annum	3,000 00
Feb. 29.	To paid confed. tax on income for 1863	77 00
	To paid $1,150 a 65 per ct.—747.50; in cash $235.00	982 50
		$27,749 50
	To 2½ per ct. commis. on paying $27,749.50 —$693.74, to 2½ per ct. commission on receiving 29,049.74—764.24	1,419 98
		$29,169 48

1862. *Credits.*

Nov. 1.	This amt. at credit of this acc't as per bal. sheet of books of Robertson, Blacklock & Co., this date	$211 46
	6 mos. int. on $1,000 State bonds, 30.00; Jan. 6, 1863, 1 q'rt's int. 660 city 6 per ct. —9.90	39 90
1863.		
Jan. 18.	6 mos. int. on $1,000 State bond, 30.00; April 2, 1863, 1 qr's int. 660 city, 6 per ct. —9.90	39 90

April 23.	Rec'd of E. N. Ball in full of prin. of his two bonds of 11,000 and 9,000, and for his ⅓ portion in bond of $4,000, say $1,333.33; also, in full of int. on acct., say $5,072.29	$26,405 62
July 31.	1 qrs. int. on 660 city 6 per ct—9.90, (1864,) by qrs. int. on same	29 70
March 23.	Int. to 1st Jan. on $23,000 confed. 8 per ct. bonds	1,265 46
April 8.	1 qrs. int. on 660 city 6 per ct.—9.90; July 5, 6 mos. int. 23,000 confed. 8 per ct. —920.00,	929 90
July 27.	1 qrs. int. on 660 city 6 per ct.—9.90; 18 mos. int. on 1,600 State bonds, 108.00	117 90
Nov. 14.	1 qrts. inst. on 660 city 6 per ct	9 90
		$29,049 74
	Balance carried down	119 74
		$29,169 48

E. E. Charleston, July 6th, 1866.

A. ROBERTSON,
Executor.

Audited and approved July 6th, 1866.
Recorded book "N," page 168.

In court of ordinary.

THE STATE OF SOUTH CAROLINA,
Charleston District:

I do hereby certify the foregoing page to be and contain a true and correct copy of the original annual account of the estate of William A. Carson, late of Charleston, planter, deceased, for William Carson, a minor, filed and recorded in this court, on the day and year above set forth.

Given under my hand and seal of office, at Charleston, this twenty-third day of July, anno Domini eighteen hundred and sixty-six.

[SEAL.]
[U. S. rev. Stamp 5 cts.]

GEORGE BUIST,
Judge of Probate.

JAMES P. CARSON, A MINOR,
in account with
ALEXANDER ROBERTSON, *Trustee.*

1863.	*Debits.*	
April 30.	To paid H. H. De Leon for $23,000 8 per ct. bonds a 103	23,690 00
Jan. 22.	To paid Mrs. Carson 3 yrs. allowance for support and education	3,000 00

1864.		
Feb. 29.	Paid conf. tax on income, (1863,) 77.00. Dec. 19, confed. tax, 1,150 a 65—747.50; cash 235.00	$1,059 50
Dec. 24.	Paid James P. Carson, in advance as per specific receipt.	3,000 00
	Paid Edgerton, Richards & Co., (acc't for clothes)	415 00
		$31,164 50
	2½ p ct. commissions, on paying $31,164.50 –$779.11. Receiving 29,052.74–726.32..	1,505 43
		$32,669 93

1862.	*Credits.*	
Nov. 1.	This am't at credit of his acc't as per balance sheet of Robertson, Blacklock & Co 's books, this date	$214 45
	6 mos. int. on State 1,000 bonds, $30.00; Jan'y 6, 1863—1 qrs. int. on 660 city 6 per ct.—9.90	39 90
	6 mos. int. on State 1,000 bond, $30.00; April 2nd, 1863—1 qrs. int. on 660 city 6 per ct.—9.90	39 90
April 23.	Received of E. N. Ball in full of principal and int. of his two bonds of $11,000 and 9,000; and, also, for his ⅓ portion of $4,000—say $1,333.33; also, in full of the int., and int. on int. to this date—say $5,072.29	26,405 63
July 31.	1 qrs. int. on 660 city 6 per ct.—9.90; Jan. 5th, 1864, 2 mos. int. on same, 19.80	29 70
1864.		
March 23.	Int. on $23,000 conf. bonds, 1,265.46; April 8th, 1 qrs. int. on same—9.90	1,275 36
July 5.	6 mos. int. on 23,000 conf. bonds—920.00; July 27th, 1 qrs. int. on same—9.90	929 90
	18 mos. int. on State bond, a 20 per ct. premium—108.00	108 00
5.	1 qrs int. on city 6 per ct. stock	9 90
		$29,052 74
	Balance carried down	3,617 19
		$32,669 93

E. E. Charleston, July 6th, 1866.

A. ROBERTSON, *Trustee.*

Audited and approved July 6, 1866.
Recorded book " N," page 169.

In court of ordinary.

THE STATE OF SOUTH CAROLINA,
Charleston District:

I do hereby certify the foregoing pages to be and contain a true and correct copy of the original annual account of the estate of William A. Carson, late of Charleston, planter, deceased, for James P. Carson, a minor, filed and recorded in this court on the day and year above set forth.

Given under my hand and seal of office, at Charleston, this twenty-third day of July, anno Domini eighteen hundred and sixty-six.

[SEAL.] GEORGE BUIST,
(U. S. Rev. stamp, 5 cts.) *Judge of Probate.*

And on the 23d day of May, A. D. 1874, came into court Magrath & Lowndes, solicitors for the complainant, Caroline Carson, and filed the following mandate from the Supreme Court of the United States, which mandate is in the words and tenor following:

Mandate.

UNITED STATES OF AMERICA, ss.,
The President of the United States of America,

To the honorable the judges of the circuit court of the United States for the district of South Carolina, greeting:

Whereas, lately in the circuit court of the United States for the district of South Carolina, before you or some of you, in a cause between Caroline Carson, complainant, and Alexander Robertson, John Freer Blacklock, William McBurney, Elias N. Ball, William J. Ball, William Carson, and James P. Carson, defendants, wherein the decree of the said circuit court, entered in said cause on the 2d day of May, A. D. 1872, is in the following words, viz: "On hearing the pleadings and the argument of counsel in this cause, it is adjudged and decreed that surrender by the defendant, Alexander Robertson, of the bonds of Elias N. Ball and the satisfaction of the mortgage of Dean Hall, to secure the said bonds held by him as trustee under the will of William A. Carson, for confederate treasury notes, were done in breach of his duty as trustee and were null and void, and that the obligors of the said bonds are not discharged from the payment thereof, and that the mortgage of Dean Hall plantation by Elias N. Ball to secure certain of the said bonds, is a valid and subsisting mortgage on the said plantation in the hands of the purchaser thereof, and that the complainant is entitled to the said bonds and to enforce the mortgage as security for the same.

"It is further ordered and decreed that the said bonds be set up as valid debts, and the said mortgage be set up as valid mortgage, and the defendants, William McBurney and William J. Ball, do surrender, on or before the first day of July, A. D. 1872, to the clerk of this court any of the said bonds of Elias N. Ball in their

possession, respectively; and that the defendant, William McBurney, do surrender to the said clerk the mortgage of Dean Hall, made by Elias N. Ball to Alexander Robertson and John F. Blacklock, executors, and referred to in the pleadings.

"It is further ordered and decreed that the clerk of this court do cancel the satisfaction of the said bonds and mortgage on the records thereof made, and that the said Alexander Robertson, by his assignment thereof, transfer to the complainant the right to collect the said bonds, or in case of default to foreclose the mortgage of Dean Hall given to secure the same.

"It is further ordered, adjudged, and decreed that the sum of thirty-one thousand dollars ($31,000) is due as principal on the said bonds of Elias N. Ball to Alexander Robertson and John F. Blacklock, payment whereof is secured by the mortgage of the said Dean Hall plantation, together with interest thereon, payable annually, from the 23d day of April, A. D. 1863, and that the sum of thirty-three thousand ($33,000) dollars is due on the bonds of Elias N. Ball and William J. Ball, together with interest, payable annually, from the 23d of April, A. D. 1863, and that the said sums and interest are payable to the complainant.

"It is further ordered and decreed that the said sum of thirty-one thousand dollars and the interest due thereon are a lien and charge on Dean Hall plantation, and that if the same be not passed on or before the first day of August, A. D. 1872, the equity of redemption of all the parties to this suit, and of Hyatt, McBurney & Co., in the said Dean Hall plantation, be forever barred and foreclosed; and that the marshal of this court do sell the said plantation at public auction in the city of Charleston, after due notice on the following terms, viz: one-fourth cash, and the balance in one, two, and three years, the credit portion to be secured by the bond of the purchaser, bearing interest, payable annually, and a mortgage of the property sold; and that he do first apply the cash proceeds of sale and assign so much as may be necessary of the said securities in satisfaction of complainant's claim, and that if any of the said securities remain he assign them to the defendant, William McBurney, in such manner that the interest of the complainant shall have priority.

"It is further ordered and decreed that if the complainant become the purchaser of Dean Hall at the said sale, the marshal do allow her to set off her claim herein established as a lien on Dean Hall, or so much as shall be necessary against her bid.

"It is further ordered and decreed that the defendant, William J. Ball, do pay to the complainant, on or before the first day of August, A. D. 1872, the amount of principal and interest due on the joint and several bonds of himself and Elias N. Ball, and that on his failure to do so process issue against him to enforce such payment.

"It is further ordered and decreed that the defendant, Alexander Robertson, account before the clerk of this court, on or before the first day of August, 1872, as executor and trustee under the will of William A. Carson, and that the said clerk report, on or before the 15th day of August, A. D. 1872, the amount due by the said Alex-

ander Robertson to the complainant as legatee under the said will and assignee of the rights of her sons under the said will; and that on the coming in of the said report and the order of the court thereon the said Alexander Robertson do pay the amount reported to be due, as the same may be then ordered.

"It is further ordered and decreed that the defendants, Alexander Robertson, William McBurney, and William J. Ball do pay the costs heretofore accrued in this cause in the proportion to be fixed by the clerk, and that the complainant have leave to apply for further orders at the foot of this decree"—

As by the inspection of the transcript of the record of the said circuit court, which was brought into the Supreme Court of the United States by virtue of an appeal taken by Alexander Robertson, John Freer Blacklock, William McBurney, and William J. Ball, agreeably to the act of Congress in such case made and provided, fully and at large appears.

And whereas, in the present term of October, in the year of our Lord one thousand eight hundred and seventy-three, the said cause came on to be heard before the said Supreme Court on the said transcript of record and was argued by counsel. On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said circuit court in this cause be, and the same is hereby reversed with costs, and that the said defendants, Alexander Robertson, John Freer Blacklock, William McBurney, and William J. Ball recover against the said complainant, Caroline Carson, one hundred and forty-eight dollars and fifty-eight cents for their costs herein expended, and have execution therefor.

And it is further ordered that this cause be, and the same is hereby remanded to the said circuit court for further proceedings to be had therein in conformity with the opinions of this court.

6TH APRIL, 1874.

You, therefore, are hereby commanded that such execution and further proceedings be had in said cause in conformity to the opinion and decree of this court, as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the Honorable Morrison R. Waite, Chief Justice of said Supreme Court, the nineteenth day of May, in the year of our Lord one thousand eight hundred and seventy-four.

D. W. MIDDLETON,
Clerk of the Supreme Court of the U. S.

And on the 4th day of June, A. D. 1874, came into court the complainant, Caroline Carson, by her solicitors, Magrath and Lowndes, and obtained the following order, which order is in the words and tenor following:

Order.

In the circuit court. In equity.

CAROLINE CARSON
vs.
ALEXANDER ROBERTSON ET AL.

On motion of Magrath & Lowndes, complainant's solicitors, it is ordered that Thursday, the 11th of June, inst., be assigned for the hearing of complainant's motion to withdraw her replication and to amend her bill by filing in its stead an amended bill.

GEO. S. BRYAN,
U. S. Judge, Dis't. of So. Ca.

4TH JUNE, 1874.

And on the 4th day of June, A. D. 1874, came into court James Lowndes, one of the complainant, Caroline Carson's, solicitors, and filed the following affidavit, which affidavit is in the words and tenor following:

Affidavit.

In the circuit court of the United States, district of South Carolina.
In equity.

CAROLINE CARSON
vs.
ALEXANDER ROBERTSON ET AL.

Personally appeared before me James Lowndes, who, being duly sworn, says that he is one of the solicitors of the complainant, and that the motion made (June 14, 1874,) to withdraw the bill and to file an amended bill, is not made for the purpose of vexation and delay. He further deposeth, that he is informed and believes the defendant Alfred L. Gillespie is a citizen of Tennessee, and resides at Knoxville; that the defendant Elias N. Miller is a citizen of New Jersey, and resides at Newark, and that the defendant William Hasseltine resides at Liverpool, England.

JAMES LOWNDES.

Sworn to before me this 2nd June, A. D. 1874.

[SEAL.] A. J. McGRATH, JR., *Not. Pub.*

And on the 11th day of June, A. D. 1874, this cause came up for hearing before the Honorable Geo. S. Bryan, district judge, upon the questions and mandate of the Supreme Court, as to the amendment of the bill in this case, after hearing argument by Mr. Lowndes for complainant, and by Mr. McCrady and Son and Mr. J. B. Campbell for the defendants, the following order was made, which order is in the words and tenor following:

Order.

In the circuit court. In equity.

CAROLINE CARSON
vs.
ALEXANDER ROBERTSON ET AL.

Upon notice to the parties to this cause before the court, and on motion of Magrath & Lowndes, complainant's solicitors, after argument, and with a view to carry into effect the decree of the Supreme Court of the United States in this cause, it is ordered that the complainant have leave, on the payment of costs, to withdraw her replication, and to amend her bill or file an amended bill as the case may require.

It is further ordered, that the complainant serve copies of her amendments or amended bill upon the solicitors of the parties defendant before the court, and that said parties have leave to answer, plead or demur to the amended bill on or before the next rule-day but one occurring after such service of the amended bill.

It is further ordered that the clerk tax the costs of this case.

11th June, 1874.

GEORGE S. BRYAN,
U. S. Judge, Dist. of So. Ca.

And on the 11th day of June, A. D. 1874, came into court the defendant, William McBurney, by his solicitors, McCrady and Son, and filed the following exceptions to the jurisdiction of the court, which exceptions are in the words and tenor following:

Exceptions.

AT CHAMBERS, *June* 11, 1874.

CAROLINE CARSON
vs.
ALEXANDER ROBERTSON ET AL.

His honor the district judge, and the complainant in this cause, will please take notice that the defendant, William McBurney, excepts to the jurisdiction of his honor the district judge, to act upon the mandate of the Supreme Court in this case while sitting in chambers, or otherwise than as a circuit judge sitting in term as such.

McCRADY & SON, *Solicitors.*
GEORGE S. BRYAN,
U. S. Judge, District of So. Ca.

11th JUNE, 1874.

And on the 13th day of June, A. D. 1874, came into court the complainant, Caroline Carson, by her solicitors, Magrath and Lowndes, and filed the following bill, which bill is in the words and tenor following:

Bill.

In the circuit court. In equity.

THE UNITED STATES OF AMERICA,
Fourth Circuit, District of So. Ca:

To the judges of the said court:

Caroline Carson, a citizen of the State of New York, brings this her bill of complaint against Alexander Robertson, John Freer Blacklock, William McBurney, Thomas R McGahan, citizens of the State of South Carolina, William Hasseltine, a citizen of Great Britain, Alfred L. Gillespie, a citizen of the State of Tennessee, and Elias N. Miller, a citizen of the State of New Jersey.

And thereupon your oratrix complains and says: 1. Her husband, William A. Carson, of the parish of St. Johns Berkley, of Charleston county, in the State of South Carolina, did by his last will and testament bearing date the 11th day of March, A. D. 1854, after making certain specific bequests, direct his executors or such one as might qualify to sell the residue of his estate, out of the proceeds of sale to pay his debts, to divide the balance of such proceeds into three equal parts, to hold one such third part in trust for his wife, Caroline Carson, the complainant, during her life, and to hold in trust the other two-third parts for his sons, William Carson and James Petigru Carson, to be paid to them absolutely on their attaining the age of 21 years. The rest and residue of his estate, including the remainder in the one-third part, to be held in trust for his wife, he bequeathed to his two said sons to invest absolutely on their attaining the age of 21 years. He appointed the defendants, Alexander Robertson and John Freer Blacklock, executors of his will and testament and guardians of his sons. Reference is craved to the said will, from which all these matters will more fully appear.

2nd. William A. Carson died on the 17th August, 1856, and the defendants, Alexander Robertson and John Freer Blacklock, proved his will in the court of ordinary of Charleston county, and there qualified as executors and proceeded to sell the testator's estate and execute his will. One part of his estate sold by them was a valuable rice plantation, not far from the city of Charleston, known as Dean Hall, which they sold to Elias N. Ball for $50,000. For the unpaid portion of the purchase money Elias N. Ball, on the 2nd March, 1857, excuted to the said executors three bonds each in the penal sum of $18,000, and two each in the penal sum of $8,000, conditioned the three first-named each for the payment of $9,000, and the two last-named each for the payment of $4,000 in five equal successive annual instalments, from the 14th Jan., 1857, with interest from this date, payable annually. To secure these bonds Elias N. Ball, on the 2nd March, 1857, executed to the said executors a conveyance by way of mortgage of Dean Hall, which mortgage was on the 11th March, 1857, duly recorded in the mesne conveyance office of Charleston county.

3rd. On or before the 4th June, 1857, the said executors had sold the whole of the testator's estate and paid his debts, and they thereupon made distribution of the testator's estate, and in their character of executors transferred to themselves as trustees under the said will the above mentioned bonds and mortgage, viz: to themselves as trustees of Caroline Carson, the complainant, one bond of $9,000 and ⅓ interest in one bond of $4,000, and to themselves as trustees of her two sons for each the same amount in bonds, making an aggregate of $31,000 in bonds. They also transferred to themselves as testamentary guardians of the testator's sons the other said bond of $4,000. They then took and held as trustees the mortgage of Dean Hall, securing the said debt of $35,000.

4th. The said executors at the same time transferred to themselves as trustees aforesaid of the complainant and her sons, three bonds of Elias N. Ball and W. J. Ball, each in the sum of $11,000, bearing interest from 16th Jan., 1857.

5th. The complainant, who during the late war adhered to the cause of the Union, early in 1861 left South Carolina, and went to New York, where she has ever since resided and had her domicile. She believes that her absence from South Carolina was matter of notoriety, and was probably known to McBurney and his copartner. Her son William Carson, who came of age after 1863, left South Carolina and the late Confederate States before the war and has been absent ever since. Her son James P. Carson came of age after the late war. John Freer Blacklock was absent from the United States during the whole of the late war.

6th. Some time in March, 1863, the defendant McBurney, at Charleston, acting for the firm of Hyatt, McBurney & Co., the copartners of which were the said McBurney and his co-defendants, William Hasseltine. Thos R. McGahan, Alfred L. Gillespie, and Edmund Hyatt, made an agreement with Elias N. Ball for the purchase of the clear title in fee of Dean Hall for $100,000 in confederate treasury notes. Thereupon McBurney, for the firm of Hyatt, McBurney & Co., furnished to Elias N. Ball a sum in confederate treasury notes equal nominally or on their face to the amount in money due on the said bonds, to enable him, Elias N. Ball, to obtain from Alexander Robertson the above-mentioned bonds and mortgage which Robertson then held as trustee of the complainant and her sons, and the market value of which, in confederate treasury notes, was more than double the said sum. Robertson in consideration of the confederate treasury notes offered him by Elias N. Ball, surrendered the said bonds and mortgage to him, and E. N. Ball thereafter on the 23d April, 1863, conveyed to the defendants, McBurney and Gillespie, in trust for or to the use of Hyatt, McBurney & Co., the said Dean Hall, McBurney being at the time of such conveyance aware of the consideration on which Alexander Robertson, as trustee, had surrendered the said bonds and mortgage. Subsequently Edmund Hyatt released to his copartners his interest in Dean Hall and received from them a mortgage of it. Satisfaction of the mortgage held by Robertson as aforesaid was not

executed until the 21st July, 1866, when it was done by Robertson alone at the suggestion, as the complainant believes, of McBurney, who had reason to expect that these proceedings would *be* shortly be begun.

7th. The complainant knew nothing of the above transactions before they occurred, and when she had knowledge of them repudiated them, and has always since done so. Her sons on coming of age repudiated them. John Freer Blacklock, the co-trustee, has repudiated them and refused to join in the satisfaction. The complainant's sons, before the bringing of this suit, assigned to her all their interest under the will of William A. Carson.

8th. The complainant submits that there was no valid legal satisfaction of the said bonds and the mortgage securing them; that if there was it was in equity *or* breach of trust on the part of Alexander Robertson to surrender the said bonds and mortgage without the concurance of his co-trustee, and that it was further a breach of trust on his part to surrender them in consideration of confederate treasury notes, and that Robertson is liable to make good all the losses caused by this breach of trust.

9th. The complainant further submits that Hyatt, McBurney & Co. had full notice of the rights and equities in Dean Hall of herself and her sons, and of the said breaches of trust on the part of her trustee, and combining with Ball and Robertson, aided and abetted the same and procured them to be done, and that he and his copartners consequently can only take Dean Hall subject to her said rights and equities.

10th. After the transactions above related Elias Nonus Ball became a citizen of New Jersey, was there adjudged a bankrupt in 1868, duly obtained his discharge in bankruptcy on the 27th Nov., A. D. 1868, and died on the 22d February, 1872. The defendant, Elias N. Miller, was duly appointed his assignee in bankruptcy. Robertson and Blacklock, as trustees aforesaid, have never accounted in the premises, and are now insolvent.

11th. By the depreciation in the value of Dean Hall since the war it has become an insufficient security for the complainant's claim.

In tender consideration whereof, and to the end that the defendants may upon their respective corporal oaths, full, true, and perfect answer make to all and singular the premises as particularly as if thereto specially interrogated, and that the said Robertson and Blacklock may be required to account with your oratrix, as trustees aforesaid, and the said Robertson & J. F. Blacklock may be decreed to be liable touching the aforesaid matters; and that the said bonds and the mortgage of Dean Hall—securing them—may be set up and be decreed to be valid subsisting securities, and the said mortgage to be a valid subsisting lien on Dean Hall; that an account may be had of the amounts due on the said bonds, and the said mortgage foreclosed and the said Dean Hall sold to pay the amount found due on the said bonds, and that an account of the rents and profits of Dean Hall may be had of the defendants, and that in the meantime

the defendants may be enjoined from committing waste on Dean Hall, and that a receiver of the rents may be appointed.

May it please your Honors, not only your writ of injunction, but also your writ or writs of subpœna directed to the said Alexander Robertson, John Freer Blacklock, William McBurney, Alfred L. Gillespie, Thomas R. McGahan, William Hasseltine, Elias N. Miller, commanding them under a certain pain, and upon a certain day therein named, to be and appear before your Honors in this honorable court, then and there to answer all and singular the premises, and to abide and perform such orders and decrees as to your Honors shall seem meet. And your oritrix will ever pray & so forth.

MAGRATH & LOWNDES,
Complainant's Solicitors.

Acceptance of service.

We acknowledge service of a copy of this amended bill this 13th June, 1874.

McCRADY & SON,
Solicitors for William McBurney.

We acknowledge service of a copy of this bill 13th June, 1874.

RUTLEDGE & YOUNG,
Sol. for Robertson & Blacklock.

And on the 13th day of June, A. D. 1874, came into court the complainant, Caroline Carson, by her solicitors, Magrath and Lowndes, and obtained the following order for publication, which order is in the words and tenor following:

Order.

The circuit court of the United States, district of South Carolina.
In equity.

CAROLINE CARSON
vs.
ALEXANDER ROBERTSON ET AL.

On motion of Magrath and Lowndes, complainant's solicitors, it is ordered that the defendant, William Hasseltine, do appear, plead, answer or demur, to the bill in this case on or before the first Monday of August, A. D. 1874.

It is further ordered that a copy of this order be served, if practicable, on the said defendant, and that a copy be published once a week, for three weeks, in a newspaper published in Charleston, and in one published in Liverpool.

GEO. S. BRYAN,
U. S. Judge, Dist. of S. C.

13TH JUNE, 1874.

Subpœna.

THE UNITED STATES OF AMERICA,
Fourth Circuit, State of South Carolina:

THE PRESIDENT OF THE UNITED STATES OF AMERICA,

To Thomas R. McGahan, a citizen of South Carolina:

You are hereby strictly commanded and firmly enjoined, that all manner of excuses being laid aside, you be and appear before the judges of the circuit court of the United States for the district of South Carolina, at Charleston, on the first Monday of August next, twenty days after the service thereof, then and there true and perfect answers to make upon your corporal oath on the Holy Evangelists, to all such matters as shall be objected against you in the bill of complaint of Caroline Carson, a citizen of New York.

And also that you do, on the rules day next immediately after the day appointed and expressed, file or cause to be filed in the registry of said court, your plea, answer or demurrer to the said bill of complaint.

Hereof fail not under the penalty of one hundred pounds.

Given under the seal of the said court.

Witness, the Honorable Morrison R. Waite, Chief Justice of the United States of America, at Charleston, in South Carolina district aforesaid, the 13th day of June, in the year of our Lord one thousand eight hundred and seventy-four, and in the ninety-eighth year of the sovereignty and independence of the United States of America.

MAGRATH & LOWNDES,
Complainant's Solicitors.

[SEAL.]

J. E. HAGOOD,
C. C. C. U. S. Dist. S. C.

The defendant is to enter his appearance in this suit in the clerk's office on or before the day at which this writ is returnable; otherwise the bill will be taken *pro confesso*.

Marshal's return.

U. S. MARSHAL'S OFFICE,
CHARLESTON, *June* 15, 1874.

I hereby certify that I served the within subpœna *ad re.* on Thos. R. McGahn by delivering a copy to him personally, and leaving the same with him, on this 15th day of June, 1874.

R. M WALLACE,
U. S. Marshal.

And on the 13th day of June, A. D. 1874, came into court the complainant, Caroline Carson, by her solicitors, Magrath & Lowndes, and obtained the following order for service or publication, which order is in the words and tenor following:

Order.

In the circuit court of the United States, district of South Carolina. In equity.

CAROLINE CARSON
vs.
ALEXANDER ROBERTSON ET AL.

On motion of Magrath & Lowndes, complainant's solicitors, it is ordered that the defendants, Alfred L. Gillespie and Elias N. Miller, do appear, plead, answer or demur to the bill in this case on or before the first Monday in August, A. D. 1874.

It is further ordered that copies of this order be served, if practicable, on the said defendants, and that copies of it be published once a week for three weeks in a newspaper in the city of Charleston, in one in Knoxville, Tennessee, and in one in Newark, New Jersey.

13th June, 1874.

GEORGE S. BRYAN,
U. S. Judge Dist. of S. C.

Marshal's return.

STATE OF TENNESSEE,
County of Knox:

I did, this 16th day of June, A. D. 1874, serve a true copy of this order on the within named Alfred L. Gillespie.

S. P. EVANS,
U. S. Marshal Dist. of E. Tenn.

I certify that the above named S. P. Evans is U. S. Marshal for the district of East Tenn., and that he acknowledged before me his execution of the above written certifiate.

Done at

[SEAL.]

H. M. AIKEN,
Clerk U. S. Circuit Court Dist. of East Tenn.

I acknowledge service of a copy of this order this 18th day of June, A. D. 1874.

E. N. MILLER.

Personally appeared before me Elias N. Miller, and acknowledged service of a copy of this order.

Newark New Jersey, June 18th, 1874.

[SEAL.]

W. H. FRANCIS,
United States Commissioner District of New Jersey.

And on the 29th day of July, A. D. 1874, came into court the complainant, Caroline Carson, and filed the following security for costs:

Security for costs.

In the circuit court. In equity.

UNITED STATES OF AMERICA,
District of South Carolina, Fourth Circuit:

CAROLINE CARSON, PLAINTIFF,
Against
ALEXANDER ROBERTSON ET AL., DEFENDANTS.

I, E. H. Kellers, of the city of Charleston, South Carolina, do bind myself to the defendant, William McBurney, to pay his costs in this case, not exceeding the amount of fifty dollars.

Given under my hand and seal this the 29th day of July, 1874.

[SEAL.] E. H. KELLERS.

UNITED STATES OF AMERICA,
District of South Carolina:

Personally appeared before me E. H. Kellers, who made oath that he is the owner of real estate in the city of Charleston, South Carolina, and is worth the sum of fifty dollars over and above all his indebtedness, including all his housetead exemptions.

E. H. KELLERS.

Sworn to before me this 29th July, 1874.

J. E. HAGOOD,
C. C. C. U. S. Dist. S. C.

And on the 3rd day of August, A. D. 1874, came into court the complainant's solicitors, Magrath & Lowndes, and obtained the following order *pro confesso*, which order is in the words and tenor following:

Order.

In the U. S. circuit court, district of South Carolina. In equity.

CAROLINE CARSON
vs.
ALEXANDER ROBERTSON ET AL.

It having been made to appear that process has been duly served on the defendant, Thomas R. McGahn, and he having failed to appear, plead, answer or demur to the bill, it is now, on motion of Magrath & Lowndes, complainant's solicitors, ordered that the bill be taken *pro confesso* against him.

Aug. 3, 1874. Rules day.

[SEAL.]

J. E. HAGOOD,
C. C. C. U. S. Dist. S. C.

Appearance.

We appear for Thomas R. McGahn this (rules day) 3rd August, 1874.

McCRADY & SON.

And on the 3rd day of August, A. D. 1874, came into court William McBurney, one of the defendants, by his solicitors, McCrady & Son, and filed the following answer, which answer is in the words and tenor following:

Answer.

THE UNITED STATES OF AMERICA,
Fourth Circuit, District of South Carolina:

In equity.

The separate answer of William McBurney, one of the defendants, a citizen of South Carolina, to the amended bill of complaint of Caroline Carson, a citizen of the State of New York.

This defendant, now and at all times, saving and reserving to himself all benefit and advantage of exception to the manifold errors, uncertainties and insufficiencies of complainant's said amended bill of complaint, for answer thereto or unto so much thereof as he is advised is material or necessary for him to answer to, answering says:

That this defendant denies the allegation contained in the introductory part of the said amended bill, that William Hasseltine is a citizen of Great Britain.

That the matters, facts and things stated in the first and second sections of the said amended bill are sufficiently answered in this defendant's answer to the original bill.

That this defendant denies the statement contained in the third and fourth sections of the said amended bill, and, on the contrary, alleges that the said executors had not paid the debts of the said testator on or before the 4th June, 1867, and had not, in their capacity of executors, the right to; nor in fact had they transferred to themselves, as trustees, the bonds and mortgage mentioned in the said section.

That this defendant has already fully answered the allegations contained in the fifth, sixth, seventh, eighth and ninth sections of the said amended bill in the answer to the original bill in this cause, and refers to his said answer therefor, save only as to the complainant's allegation in the sixth section of the said amended bill, wherein she alleges that Robertson held the bonds and mortgages therein mentioned, as trustee, which is positively denied, and saving also the allegations in the said section respecting the satisfaction of the mortgage, which said satisfaction this defendant says was not entered thereon, that is, on the record thereof, in the registry of the mesne conveyance for Charleston county (then district), in execution of the undertaking of the said Elias N. Ball and Alexander Robertson, at the time when the purchase money was paid, as the satisfaction could not then be entered because the records of the mesne conveyance office had been removed from Charleston, and were not brought back until after the war.

That the adjudication of the said Elias N. Ball as bankrupt, and his death, as alleged in the tenth section of the bill as appears thereby, took place subsequently to the filing of the original bill, 11 August, 1866, and subsequently also to the filing of the substituted bill of the 14 December, 1866; that is to say, as appears thereby, the said Elias N. Ball was not adjudicated a bankrupt until some time in the year 1868, and did not die until the 22nd day of February, in the year 1872; and this defendant submits that the complainant cannot, by way of amendment, introduce any matters or transactions which have taken place subsequently to the filing of the original bill, and he insists upon the same advantage with respect to this objection as if he had demurred or pleaded thereto.

And this defendant answering the eleventh section of said amended bill says—that the said Dean Hall was never worth the sum for which it was purchased by the said Elias N. Ball, and that he, this defendant, and his co-defendants, paid the full value of the said plantation.

That its principal value consisted in a mill upon it, which was destroyed upon the evacuation of Charleston, by the United States forces, and that this defendant has spent large sums of money upon the said plantation in repairing and reconstructing the dams, dykes, canals and banks thereon, and improving the same far beyond any profits derived from the said plantation, which has since the purchase thereof been a positive expense to his co-defendant and himself.

And this defendant further answering says—that William Hasseltine, Alfred L. Gillespie and Elias N. Ball, were indispensible parties to this cause and out of the jurisdiction and beyond the reach of the process of this court at the time of the filing of the original bill, and were not made parties thereto; and if it be true as alleged in the said amended bill that Elias N. Ball has been adjudged bankrupt, and has died since the filing of the original bill in this case, his legal representatives are indispensable to any proceedings relating to the subject matter of this cause, and cannot be made parties hereto by any amendments to the original bill, nor even by bill of revisor, but only by a supplemental bill in the nature of an original bill, and this defendant relies and insists upon this want of parties now stated and shown to this court, as an insuperable objection to the jurisdiction of this court, sitting as a court of equity; and claims to be allowed to insist upon this want of parties and other matters herein stated in the same manner as if he had pleaded the same, or demurred for the said causes to the said amended bill. And this defendant denies all and all manner of combination and confederacy wherewith he is by the said bill charged, without there is any other matter, cause or thing in the said complainant's said amended bill of complaint contained material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, avoided, traversed or denied, is true to the knowledge of this defendant. All which matters and things this defendant is ready and willing to aver,

maintain and prove as this honorable court shall direct, and hereby prays to be hence dismissed with his reasonable costs and charges, in this behalf most wrongfully sustained.

WM. McBURNEY,
McCRADY & SON,
Defendants' Solicitors.

Affidavit.

THE UNITED STATES OF AMERICA,
Fourth circuit, district of South Carolina:

Personally appeared before me William McBurney, and made oath that the facts and things contained in his foregoing answer, as far as they are derived from his own knowledge, are correct and true, and as far as they are derived from the information of others he believes them to be true.

WM. McBURNEY.

Sworn to before me this third day of August, 1874.
J. E. HAGOOD,
C. C. C. U. S. Dist. of S. C.

And on the 13th day of August, A. D., 1874, came into court the complainant, Caroline Carson, by her solicitors, Margrath and Lowndes, and obtained leave of the court to amend her bill, which amendment is in the words and tenor following:

Amendment.

In equity. United States circuit court, district of South Carolina.

CAROLINE CARSON
vs.
ALEXANDER ROBERTSON ET AL.

It appearing that an answer has been filed in this case by the defendant, William McBurney, and that no replication has been filed, it is now, on motion of Magrath and Lowndes, complainant's solicitors, ordered that the complainant have leave to amend her amended bill last filed, on or before the rules day in September next, by inserting in the tenth paragraph thereof, after the words "bankrupt." the words "duly obtained, his discharge in bankruptcy on the 27th day of November, A. D., 1868."

13th August, 1874. GEORGE S. BRYAN,
U. S. Judge, Dist. of S. C.

Service.

We acknowledge this 24th of August, 1874, service of copies of

the amendment made in pursuance of the order 13th of August, 1874, but without waiver of any objection to the same.

McCRADY & SON,
Solicitors for Wm. McBurney.
THOS. R. McGAHN,
Rutledge & Young.

Marshal's return of service.

THE STATE OF TENNESSEE,
County of Knox:

I hereby certify that I served a certified copy of the within order on Alfred L. Gillespie, this 27th of August, A. D., 1874.

L. P. EVANS,
U. S. Marshal.

I hereby certify that the above named L. P. Evans is United States Marshal for the District of East Tennessee, and that he acknowledges his signature above.

[SEAL.]

H. M. AIKEN,
Cl'k. U. S. Circuit Court.

I hereby certify that the above attestation is in due form.

CONNALLY F. TRIGG,
U. S. District Judge.

And on the 5th day of September, A. D., 1874, came into court T. C. Neville, forman of the Charleston News and Courier, and filed the following affidavit as to the publication of the orders of the 13th of June, 1874, which affidavit is in the words and tenor following:

Affidavit.

In the circuit court of the United States, district of South Carolina

In Equity.

CAROLINE CARSON
vs.
ALEXANDER ROBERTSON.

I, T. C. Neville, do hereby certify that I am foreman of the printers of the Charleston News and Courier, a newspaper published in the city of Charleston in said State, and that the orders in the above case of the 13th of June, 1874, (copies of which are hereto annexed as parts of this certificate,) requiring Alfred L. Gillespie and Elias N. Miller and William Hasseltine to appear, plead, answer and demur to this bill herein, were to my own knowledge published in said paper once a week for three weeks, beginning on the 15th day of June, and ending on 6th day of July, 1874.

Witness my hand this fifth day of September, 1874.

T. C. NEVILLE, *Foreman.*

Legal notices attached to affidavits.

In the circuit court of the United States, district of South Carolina. In Equity.

CAROLINE CARSON
vs.
ALEXANDER ROBERTSON ET AL.

On motion of Magrath and Lowndes, complainant's solicitors, it is ordered that the defendants, Alfred L. Gillespie and Elias N. Miller, do appear, plead, answer or demur to the bill in this case, on or before the first Monday in August, A. D. 1874.

It is further ordered that copies of this order be served, if practicable, on the said defendants, and that copies of it be published once a week for three weeks in a newspaper in the cities of Charleston, in one in Knoxville, Tenn., and in one in Newark, N. J.

[Signed.] GEO. S BRYAN,
13TH JUNE, 1874. *U. S. Judge, District of South Carolina.*

In the circuit court of the United States, district of South Carolina. In equity.

CAROLINE CARSON
vs.
ALEXANDER ROBERTSON ET AL.

On motion of Magrath and Lowndes, conplainant's solicitors, it is ordered that the defendant, William Hasseltine, do appear, plead, answer or demur to the bill in this case on or before the first Monday of August, A. D. 1874.

It is further ordered that a copy of this order be served, if practicable, on the said defendant, and that a copy be published once a week for three weeks in a newspaper published in Charleston, and in one published in Liverpool.

[Signed.] GEORGE S. BRYAN,
13TH JUNE, 1874. *U. S. Judge, District of South Carolina.*

And on the 5th day of October, A. D. 1874, came into court the defendant, Thomas R. McGahn, by his solicitors, McCrady and Son, by consent of counsel, and filed the following answer, which answer is in the words and tenor following:

Answer.

In equity.

THE UNITED STATES OF AMERICA,
Fourth Circuit, District of South Carolina:

The separate answer of Thomas R. McGahn, a citizen of the State

of South Carolina, to the bill of complaint of Caroline Carson, therein alleging herself to be a citizen of the State of New York.

This defendant now and at all times saving and reserving to himself all benefit and advantage of exception to the manifold errors, uncertainties and insufficiencies of complainant's said bill of complaint, for answer thereto or unto so much thereto as he is advised it is material or necessary for him to answer unto, answering says:

That this defendant denies that Caroline Carson, the complainant, is now, or was at the time of the filing of the said complainant's said bill of complaint, which this defendant is now answering, and to which he is made a party, a citizen of the State of New York, but, on the contrary, alleges and avers that she has left her domicil in the said State of New York and is now, as he is advised, a citizen of the State of South Carolina, and this defendant relies upon this fact now stated and shown to the court as an insuperable objection to the jurisdiction thereof in this cause, and claims to be allowed to insist upon it in the same manner as if he had pleaded the same to the said bill.

That this defendant denies that William Hasseltine, one of this defendant's co-defendants, is a citizen of Great Britain, but says and insists that he is an indispensable party to this cause and is out of the jurisdiction and beyond the reach of the process of this court. That Edmund Hyatt is also an indispensable party to the same, and that if it be true, as the complainant alleges, that she is a citizen of the State of New York, he cannot be made a party to these proceedings, inasmuch as the complainant and himself are in that case citizens of the same State, between whom this court has no jurisdiction, and this defendant claims to be allowed to insist upon this want of parties in the same matter manner as if he had pleaded the same. That he admits that the late William A. Carson, mentioned in the said bill, did make his last will and testament bearing the date in the said bill mentioned, in which, after certain legacies, he ordered and directed his executors, or such one as might qualify thereon, to sell the rest of the estate, real and personal, as soon after his death and upon such terms as he or they might deem most judicious, with such other directions and provisions as are recited in the said bill, and thereof appointed this defendant's co-defendants, Alexander Robertson and John F. Blacklock, executors.

And this defendant, further answering, also admits that the said William A. Carson died, as stated in the said bill, leaving his said will in force; that the said will was duly proved by the said executors therein named, who took upon themselves the executors thereof, but he knows nothing of the general conduct of the said executors in reference to their management of the estate of their testator.

And this defendant, further answering, admits that the said executors of the said testator did on or about the second day of February, in the year of our Lord eighteen hundred and fifty-seven, sell and convey to Elias N. Ball, a plantation known as Dean Hall, and for part of the purchase money took the bonds of the said purchasers to themselves as such executors, conditioned for the payment of thirty-

five thousand dollars, and to secure the same, took a mortgage of the said plantation also to themslves as such executors, which bond and mortgage bore the same date as the said conveyance.

That in the month of December, A. D. 1862, the mercantile firm of Hyatt, McBurney & Co., whereof Edmund Hyatt, a citizen of the State of New York, William McBurney, William Hasseltine, Alfred L. Gillespie, and this defendant, then citizens of the State of South Carolina, were the members and partners, having a large amount of cotton on hand, and being unable by reason of the war then raging and the blockade of the port of Charleston to carry on their business as dry-goods merchants, were willing to change some of their investments into real estate until peace should be restored, and learning that the said plantation might be purchased at a fair price, the said firm of Hyatt, McBurney & Co. treated for the purchase of the said plantation, which treaty finally brought the said Elias N. Ball and the said Hyatt, McBurney & Co. to a contract of sale and purchase some time in the month of March, A. D. 1863, respecting the said plantation, at the price of one hundred thousand dollars cash; that upon this treaty the late Honorable James L. Petigru, (as this defendant has understood and believes and hopes to prove,) who was then and had always been the legal adviser of the executors of the said William A. Carson, who was the father of the complainant, was not only informed but consulted by the executors or one of them, and not only approved, but urged the completion of the said treaty and contract with the express and avowed purpose of having the bonds and mortgages of the said Elias N. Ball to the executors of the said William A. Carson paid off and satisfied out of the purchase money; that under these circumstances this defendant and his copartners had good reason to believe, and did believe, that the said contract of purchase was fair and equal, and that they hoped it would prove advantageous to both parties to the contract; that in pursuance of the said contract the said Hyatt, McBurney & Co., as soon as the title to the said plantation had been examined and approved by their solicitor, and before the conveyance hereinaftermentioned was made and executed, on or about the 23d day April in the year last aforesaid, paid on account of the purchase money to the said Elias Nonus Ball more than eighty thousand dollars, to enable him to pay off his bonds to the said executors of the said William A. Carson and satisfy the mortgage thereon, and that the said Elias Nonus Ball afterwards, in and by his certain deed-poll, bearing date the seventh day of May, in the year last aforesaid, for and in consideration of the said sum of one hundred thousand dollars therein written and expressed, conveyed the said plantation to two of the copartners, William McBurney and Alfred L. Gillespie, and to the survivor of them, with the usual general warranty in fee simple, but so as by virtue and operation of the statute of uses in force in South Carolina, to secure to each of the copartners the enjoyment of the same according to his interest in the copartnership by a legal estate commensurate therewith in the said plantation, and at the same time to enable the said William McBurney and Al-

fred L. Gillespie, or the survivor of them, upon the winding up of the said copartnership, to sell and convey the said plantation, free from any encumbrances or liens, by or against any copartner, and also free from the contingent dower of any of their wives or widows, which said deed contained the usual clause of warranty, duly recorded in the office of the register of mesne conveyance for the county of Charleston, in the State of South Carolina, all of which will more fully appear upon reference to the said deed, a copy of which deed is herewith filed as an exhibit, marked "A."

And this defendant further answering says, that the said copartnership of Hyatt, McBurney & Co being about to expire, that is to say on the 31st day of May last aforesaid, 1863, the said Edmund Hyatt, between the purchase of the said plantation and the conveyance herein before-mentioned, sold his interest in the said copartnership property and assets to this defendant and the other copartners, and in and by his certain deed of release, bearing date the 8th May, A. D. last aforesaid, (1863,) released his interest in the said plantation, so that the said interest should enure to the only proper use and behoof of this defendant, William McBurney, William Hasseltine, and Alfred L. Gillespie, their respective heirs and assigns, in such shares, interests, and proportions as they lately had as copartners in the capital and profits of the late copartnership of Hyatt, McBurney & Co., which deed was very soon after, to wit: on the fifteenth day of the month and year last mentioned, recorded in the office of the register of mesne conveyance for the county of Charleston, (*then district*,) and State aforesaid, as will fully appear upon reference to the said deed, a copy of which is herewith filed as an exhibit and marked "B."

And thereupon to secure a bond of the other partners to the said Edmund Hyatt, conditioned for the payment of forty thousand dollars given for the purchase of his interest in the said firm of Hyatt, McBurney & Co., the said William McBurney and the said Alfred L. Gillespie, by their deed signed in the presence of two witnesses, bearing date the same day last aforesaid, declared, limited, and appointed the said plantation to the use of the said Edmund Hyatt, his heirs and assigns, as a mortgage to secure the said bond, which was also soon after recorded in the office aforesaid, as will fully appear upon reference to the said deed, a copy of which is herewith filed as an exhibit and marked "C."

And this defendant further answering says, that he denies the statements contained in the third and fourth sections of the said bill, and on the contrary alleges that the said executors had not paid the debts of the said testator on or before the 14th June, 1857, and had not, in their capacity of executors, the right to, nor in fact had they transferred to themselves, as trustees, the bonds and mortgage mentioned in the said section.

And this defendant, further answering, says that he denies that the market value of the bonds and mortgage of Elias N. Ball, which were satisfied by the said executors of William Carson, upon their sale of the said plantation to the said William McBurney and Alfred

L. Gillespie, was more than double the said sum so paid by the said William McBurney and Alfred L. Gillespie for the said plantation; he denies that the said bonds and mortgage had a market value greater than the sum paid for the said place, and on the contrary he says and insists that full value was given for the said plantation; that in fact the said Dean Hall plantation was never worth the sum paid for it; that the principal value of the said plantation consisted in a mill upon in, which was in danger of destruction by the contending forces whenever Charleston should be taken by the United States forces then besieging it, and which was so destroyed by the United States forces upon the capture of the city, and that large sums of money have since been spent upon the said plantation in repairing and reconstructing the dams, dykes, canals, and banks thereon, and improving the same, far beyond any profits derived from the said plantation, which has since the purchase thereof been a positive expense to his copartners and himself.

And this defendant denies all and all manner of combination and confederacy wherewith he is by the said bill charged, without there is any other matter, cause, or thing in the complainant's said bill of complaint contained, material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, avoided, traversed or denied, is true the knowledge or belief of this defendant. All which matters and things this defendant is ready and willing to aver, maintain and prove, as this honorable court shall direct, and hereby prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

McCRADY & SON,
Def'ts for Solicitors.

STATE OF SOUTH CAROLINA,
Charleston County:

Personally appeared before me, Thos. R. McGahn, defendant above named, who being duly sworn, says that the matters, facts, and things stated in the foregoing answer of his own knowledge are true and correct, and as to those stated on information derived from others he believes them to be true.

Sworn to before me this 5th day of October, A. D. 1874.

THOS. R. McGAHN,
J. E. HAGOOD,
C. C. C. U. S., Dist. of S. C.

EXHIBIT "A."

STATE OF SOUTH CAROLINA:

Know all men by these presents, that I, Elias N. Ball, of the parish of St. Johns Berkley, in the State aforesaid, planter, in consideration of the sum of one hundred thousand dollars to me paid by William McBurney and Alfred L. Gillespie, of the city of Charles-

ton, in the State aforesaid, merchants, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said William McBurney and Alfred L. Gillespie, all that plantation or tract of land known as Dean Hall, situate on Cooper river, in St. Johns parish, Berkley, in the district of Charleston, and State aforesaid, butting and bounding to the east on Cooper river, to the northwest on lands formerly of William Colleton, but now or late John Harleston and Dr. William Moultrie, to the west on White Hall plantation, hereinafter described, to the southwest on Back river, to the south on lands formerly of J. E. Holmes, now of Peter Gourdin, and having such form, dimensions and descriptive marks as are represented on a plat thereof made by Henry Ravenel, surveyor, in March, 1827, and containing twenty-six hundred acres, be the same more or less. Also that tract of land situate in the same parish, known as White Hall, bounding east on Dean Hall, northeast on lands of John Harleston and Dr. William Moultrie, northwest on lands formerly of John C. Ball, H. S. Ball, deceased, now of James Poyas, and southwest on land formerly of John C. Ball, and afterwards of William Ball, deceased, having such form, dimensions and descriptive marks as are represented on a plat made by R. Q. Pinckney, surveyor, in April, 1873, and containing five hundred and twenty-six acres and twenty-three hundredths of an acre, more or less. Also that parcel of land in the same parish containing thirty-five acres and twenty-one hundredths of an acre, bounding north and east on Chicken creek, and south and west on Medway or Back river, as the same was granted to W. A. Carson by the State aforesaid, on the 4th day of September, A. D. 1843, together with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging, or in anywise incident or appertaining.

To have and to hold all and singular the premises before mentioned, unto the said William McBurney and Alfred L. Gillespie, and to the survivor of them, and to the heirs and assigns of such survivor forever, but to and for such uses, intents and purposes as they, the said William McBurney and Alfred L. Gillespie, or the survivor of them, shall by any deed in writing, duly signed by them or him, in presence of two witnesses, from time to time limit, direct or appoint, and until such limitation, direction or appointment, to the only proper use and behoof of Edmund Hyatt, William Hasseltine, Thomas R. McGahn, and the said William McBurney and Alfred L. Gillespie, their respective heirs and assigns, in such shares, interests and proportions as they are now entitled to in the capital and profits of the present copartnership of Hyatt, McBurney & Co.

And I do hereby bind myself, my heirs, executors and administrators, to warrant and forever defend all and singular the said premises unto the said William McBurney and Alfred L. Gillespie, and to the survivor of them, and to his heirs and assigns, against me and my heirs, and all other persons or person whomsoever lawfully claiming or to claim the same or any part thereof. And I, the said Elias N. Ball, for myself and my heirs, executors and adminis-

trators, do convenant, promise, grant and agree to and with the said William McBurney and Alfred L. Gillespie, and with the survivor of them, and his heirs and assigns, by these presents in manner and form following: that is to say that I, the said Elias N. Ball, now, at the time of the sealing and delivery of these presents, am lawfully and absolutely seized of and in the said plantation and tract of land hereinbefore described and conveyed, and all and singular other the premises hereinbefore mentioned, and intended to be hereby granted and released, and every part and parcel thereof, with their and every of their appurtenances, of a good, sure, perfect and absolute estate of inheritance in fee simple, without any manner of condition, trust, proviso, power of revocation or limitation, or any use or uses, or other restraint, matter or thing whatsoever, to alter, change, charge, defeat or evict the same. And also that I, the said Elias N. Ball, now have in myself good right, full power, and lawful and absolute authority to grant, release and confirm the said plantation and tract of land, and all and singular other the premises hereinbefore mentioned, and intended to be hereby granted and released, and every part and parcel thereof, with their and every of their appurtenances, unto the said William McBurney and Alfred E. Gillespie, and to the survivor of them, and to his heirs and assigns forever, as aforesaid. And also that it shall and may be lawful to and for the said William McBurney and Alfred L. Gillespie, and the survivor of them, and all persons to whom they or he shall limit, direct and appoint the same, and until then to and for them and Edmund Hyatt, William Hasseltine and Thomas R. McGahn, their heirs and assigns, from time to time, and at all times forever hereafter, peaceably and quietly to enter into, have, hold, occupy, possess and enjoy the said plantations and tracts of land, and all and singular other the premises hereinbefore mentioned, and intended to be hereby granted and released, and every part and parcel thereof, with their and every of their appurtenances, without any of the lawful let, suit, trouble, molestation, eviction, or interruption of me, the said Elias N. Ball, my heirs, executors or administrators, or any other person or persons whatsoever, and that free and clear, and freely and clearly and absolutely acquitted, exonerated and discharged of and from all and all manner of former and other gifts, grants, bargains, sales, uses, wills, intails, jointers, dowers, judgments, executions, charges and incumbrances whatsoever had, made, done, committed or suffered by me, the said Elias N. Ball, or any other person or persons whatsoever.

And lastly, that I, the said Elias N. Ball and my heirs, and all and every other person or persons lawfully claiming or to claim any estate, right, title, trust or interest, of, in or to the said plantations and tracts of land, and all and singular other the premises hereinbefore mentioned, and intended to be hereby granted and released, or any part or parcel thereof, shall and will from and at all times hereafter, at the reasonable request and proper costs and charges in the law, of the said William McBurney and Alfred L. Gillespie, and the survivor of them and his heirs and assigns, make, do, acknowledge, and

execute, or cause and procure to be made, done, acknowledged and executed, all and every such further and other lawful and reasonable act and acts, thing and things, conveyances and assurances in the law whatsoever, for the further and better, and more perfect and absolute granting, conveying and assuring the said plantations and tracts of land and all and singular other the premises hereinbefore mentioned, and intended to be hereby granted and released, and every part and parcel thereof, with their and every of their appurtenances, to and for the use and behalf of the said William McBurney and Alfred L. Gillespie and the survivor of them, or of their or his appointees, and their and his heirs and assigns forever, as by him or them, or his or their counsel learned in the law, shall be reasonably devised or advised, and required.

Witness my hand and seal, this seventh day of May, in the year of our Lord one thousand eight hundred and sixty-three, and in year of the Independance of States of America.

[L. S.] ELIAS N. BALL.

Signed, sealed and delivered in the presence of—

The printed clause about appurtenances and the habendum, being the two first and parts of the third printed line on this page first erased.

(Signed,) K. SIMONS,

[U. S. I. R. Stamps.] J. J. GUERARD.

Then follows probate and remunciation of dower.

EXHIBIT "B."

THE STATE OF SOUTH CAROLINA.

To all to whom these presents shall come or may concern, greeting:

Whereas, in and by a certain deed bearing date the seventh day of May, in the year of our Lord eighteen hundred and sixty-three, Elias N. Ball conveyed to William McBurney and Alfred L. Gillespie a plantation on Cooper river, in the parish of St. Johns Berkley, known as Dean Hall, in three several parcels; the two first designated therein as Dean Hall and White Hall, and the third only as a piece of land, described therein, to be held by the said William McBurney and Alfred L. Gillespie and to the survivor of them, and his heirs and assigns forever; but to, for and upon such uses, intents and purposes as they, the said William McBurney and Alfred L. Gillespie or the survivor of them, shall by any deed in writing duly signed and sealed by them or him in presence of two witness, from time to time limit, direct and appoint, and until such limitation, direction and appointment, to the only proper use and behoof of Edmund Hyatt, William McBurney, William Hasseltine, Alfred L. Gillespie and Thomas R. McGahan, their respective heirs and assigns, in such shares, interests and proportions as they had as copartners in the capital and profits of the late copartnership of Hyatt, McBurney & & Co.; and, whereas I, the said Edmund Hyatt, have this day

bargained, sold and (released,) transferred my share, interest and proportion of the said late copartnership of Hyatt, McBurney & Co., to my late copartners. Now know all men, that I, the said Edmund Hyatt, have revised, released and forever quit-claimed, and by these presents do revise, release and forever quit-claim unto the said William McBurney and Alfred L. Gillespie all my right, title, interest, share and proportion in the uses of the said premises, so that neither I or any of my heirs or assigns can or shall hereafter claim, challenge or demand any right, title or interest in the said premises or the uses thereof; but all my said right, title, interest, share and proportion thereof and therein, shall enure to the only proper use and behoof of the said William McBurney, William Hasseltine, Alfred L. Gillespie and Thomas R. McGahn, their respective heirs and assigns in such shares, interest and proportions as they lately had as copartners in the capital and profits of the late copartnership of Hyatt, McBurney & Co. In witness whereof, I have hereunto set my hand and seal, this eigth day of May, in the year of our Lord eighteen hundred and sixty-three.

[SEAL.] (Signed,) EDMUND HYATT.

Signed and sealed in the presence of—

(Signed.) FRANCIS L. UPSON.

FRED. RICHARDS.

U. S. I. R. Stamps.

Then follows probate.

EXHIBIT "C."

THE STATE OF SOUTH CAROLINA.

To all to whom these presents shall come or may concern, greeting:

Whereas, in and by a certain deed bearing date the seventh day of May, in the year of our Lord eighteen hundred and sixty-three, Elias N. Ball conveyed to William McBurney and Alfred L. Gillespie a plantation on Cooper river, hereinafter more particularly described, to be held by them and the survivor of them, and his heirs and assigns forever, but to, for and upon such uses, intents and purposes as they, the said William McBurney and Alfred L. Gillespie, or the survivor of them, shall, by any deed in writing duly signed and sealed by them or him in presence of two witnesses, from time to time limit, direct or appoint, and until such limitation, direction and appointment to certain uses in the said deed declared. And whereas, the said William McBurney and Alfred L. Gillespie, together with William Hasseltine and Thomas R. McGahn, in and by their certain bond bearing equal date herewith, stand firmly held and bound unto Edmund Hyatt, in the penal sum of eighty thousand dollars, conditioned for the payment of the full and just sum of forty thousand dollars, on the twenty-second day of April, in the year of our Lord eighteen hundred and sixty-eight (with annual interest thereon from the twenty-second day of April, in the year of our Lord eighteen

hundred and sixty-three,) with annual interest thereon from the twenty-second day of April, in the year of our Lord eighteen hundred and sixty-three, payable annually, if demanded; no interest upon the annual interest to accrue or be charged but from the day of demand made in the State of South Carolina as in and by the said bond and condition, reference being thereunto had, will more fully appear. Now, know all men, that we, the said William McBurney and Alfred L. Gillespie, in consideration of the said debt, and for the better securing the payment thereof to the said Edmund Hyatt, according to the condition of the said bond, have limited, directed and appointed, and by these presents do limit, direct and appoint, all that plantation or tract of land known as Dean Hall, situated on Cooper river, in St. Johns parish, Berkley, in the district of Charleston, butting and bounding and having such contents and description marks as are mentioned, expressed and described in the above in part recited deed. Also all that tract of land known as White Hall, situate in the same parish, bounding and having such description marks as are also mentioned and described, and such contents as are expressed in the said in part recited deed, and also all that parcel of land in the said parish, containing and bounding and granted as in the said deed is also fully mentioned, expressed and described, and all and singular the premises mentioned and described and conveyed in the said in part recited deed, together with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging, or in any wise incident or appertaining from the day of the date thereof, to the only proper use and behoof of the said Edmund Hyatt, his heirs and assigns, forever; provided, always, nevertheless, and it is hereby expressly declared to be the true intent and meaning of these presents, that if the said William McBurney, William Hasseltine, Alfred L. Gillespie, Thomas R. McGahn, or any or either of them, their or any of their heirs, executors, administrators or assigns, do and shall well and truly pay or cause to be paid unto the said Edmund Hyatt, his executors, administrators or assigns, the said debt or sum of money aforesaid, with the interest thereon, if any shall be due, according to the true intent and meaning of the said bond and condition, then and in such case, and at all times from thenceforth, all and every the use and uses, estate and estates hereinbefore limited and appointed of and concerning the plantations and tracts of land aforesaid, shall cease, determine, and be utterly null and void to all intents and purposes, and the said William McBurney and Alfred L. Gillespie, and the survivors of them, and their heirs of such survivor, shall be in of their former estate under the said in part recited deed, to have and hold the said premises to, for and upon such uses, intents and purposes as we, the said William McBurney and Alfred L. Gillespie, or the surviver of us, shall, by any deed in writing, duly signed and sealed by us, or the survivor of us, in presence of two witnesses, from time to time limit, direct or appoint, and until such limitation, direction and appointment to the uses in the said deed declared, save only and except that he, the said

Edmund Hyatt, shall be thenceforth excluded from any part or share of the use thereof, he having bargained and sold his part thereof to the other parties therein named; and it is also agreed by and between the parties hereto, that the said William McBurney, William Hasseltine, Alfred L. Gillespie and Thomas R. McGahn are to hold and enjoy the said premises until default of payment shall be made.

Witness our hands and seals, this eighth day of May, in the year of our Lord one thousand eight hundred and sixty three.

[SEAL.] WM. McBURNEY.
[SEAL.] ALFRED L. GILLESPIE.

Signed, sealed and delivered in presence of—
FRANCIS L. UPSON,
FRED. K. RICHARDS.

THE STATE OF SOUTH CAROLINA,
Charleston District:

Personally appeared before me, Francis L. Upson, who, being duly sworn, says that he saw the above named William McBurney and Alfred L. Gillespie sign, seal, and as their act and deed, deliver the foregoing deed, and that he, with Frederick Richards, witnessed the execution thereof.

FRANCIS L. UPSON.

Sworn to before me this 14th day of May, anno Domini 1863.
EDWARD McCRADY,
Not. Pub. & ex-Offi. Magistrate.

And on the 27th day of February, A. D. 1875, came into court the complainant, Caroline Carson, by her solicitors, Magrath & Lowndes, and filed the following replication, which replication is in the words and tenor following:

Replication.

THE UNITED STATES OF AMERICA,
District of South Carolina, Fourth Circuit:

In equity.

CAROLINE CARSON,
vs.
ALEXANDER ROBERTSON ET AL

Replication of Caroline Carson, complainant.

This repliant, saving and reserving unto herself all and all manner of advantage of exception to the manifold insufficiencies of the said answers, for replication thereunto, saith that she will aver and prove her said bill to be true, certain and sufficient in the law to be answered unto, and that the said answers of the said defendants are uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that there is any other matter or thing whatsoever in the said answers contained, material or effectual in the law, to be replied to, confessed or avoided, traversed or denied, is true. All which matters and things this repliant is and will be ready to aver and prove, as

this honorable court shall direct, and humbly prays, as in and by her said bill she hath already prayed.

JAMES LOWNDES,
Sol'r for Caroline Carson.

And on the 1st day of April, A. D. 1875, came into court W. Henry Fletcher, and filed the following affidavit, which affidavit is in the words and tenor following:

Affidavit.

The circuit court of the United States, district of South Carolina.
In equity.

CAROLINE CARSON
vs.
ALEXANDER ROBERTSON ET AL.

I, William Henry Fletcher, of Liverpool, in the county of Lancaster, in England, attorney at law, make oath and says as follows:

1. I am a partner in the firm of Hull, Stone & Fletcher, attorneys at law, of Liverpool aforesaid.

2. I have made enquiries of numerous people carrying on business in and resident at and near Liverpool, in order to ascertain the whereabouts of the defendant, William Hasseltine, in this cause mentioned, but without success.

3. Many of the people I enquired of were acquainted with the said defendant, William Hasseltine, at the time he resided in Liverpool, and stated that he left Liverpool suddenly several years ago, and that they had not since seen or heard of his whereabouts.

4. I have also searched in the latest Liverpool postal directory and cannot find the name of the said defendant, William Hasseltine, therein.

5. I have also caused the order of the thirteenth of June, one thousand eight hundred and seventy-four, in this cause, of which the following is a copy:

"In the circuit court of the United States, district of South Carolina
In equity.

"CAROLINE CARSON
vs.
"ALEXANDER ROBERTSON ET AL.

" On motion of Magrath & Lowndes, complainant's solicitors, it is " ordered that the defendant, William Hasseltine, do appear, plead, " answer or demur to the bill in this cause, on or before the first " Monday of August, A. D. 1874.

" It is further ordered that a copy of this order be served, if prac- " ticable, on the said defendant, and that a copy be published one

" a week, for three weeks, in a newspaper published in Charleston,
" and in one published in Liverpool.

" GEORGE S. BRYAN,
" *U. S. Judge district of S. C.*

" 13th June, 1874."

To be published in the Liverpool *Daily Albion* newspaper on every Monday in three successive weeks, and I have received no communication in reply to such advertisement from the defendant, William Hasseltine, or from any one else.

W. HENRY FLETCHER.

Sworn to at Liverpool aforesaid this fourth day of February, one thousand eight hundred and seventy-five, before me.

[SEAL.] FRANCIS LOWNDES,
Not. Pub. Liverpool, quod Attestor.

I, the undersigned, vice counsel of the United States of America for the port of Liverpool and its dependencies, do certify and make known to whom these presents shall come, that Francis D. Lowndes, before whom the annexed affidavit of W. Henry Fletcher has been made, and whose true signature and notarial seal are subscribed and affixed thereto, is a notary public, duly authorized, admitted and sworn, residing in Liverpool, to whose acts as such full faith and credit are due.

Given under my hand and seal of office at Liverpool this 4th day of February, and year of our Lord one thousand eight hundred and seventy-five.

[SEAL.] CHAS. D. ATWOOD,
U. S. Vice Consul.

And on the 1st day of April, A. D. 1875, came into court Edward James Summers, and filed the following affidavit, which affidavit is in the words and tenor following:

Affidavit.

CAROLINE CARSON
vs.
ALEXANDER ROBERTSON ET AL.

In the circuit court of the United States, district of South Carolina.
In equity.

I, Edward James Summers, of Liverpool, in the county of Lancaster, in England, advertising clerk, make oath and say as follows:

1. I am in the employ of the proprietors of the Liverpool Daily Albion newspapers as advertising clerk.

2. By the instruction of Messisures Hull, Stone and Fletcher, attorneys at law in this town, I inserted in the said Daily Albion on

Monday, the eleventh day of January last, Monday, the eighteenth day of January and Monday, the twenty-fifth day of January last, by way of advertisement, the order in the cause of Carson *vs.* Robertson and others, which order as advertised is shewn in the printed slip hereto annexed and cut from a copy of the Daily Albion published on one of those days.

3. I have not had any reply or communication from any person whatsoever in answer to such advertisement.

EDWARD J. SUMMERS.

Sworn at Liverpool aforesaid this fourth day of February, one thousand eight hundred and seventy-five, before me.

[SEAL.] FRANCES D. LOWNDES,
Notary Public, Liverpool, quod attestor

I, the undersigned vice-consul of the United States of America for the port of Liverpool and its dependencies, do certify and make known to whom these presents shall come, that Francis D. Lowndes, before whom the annexed affidavit of Edward James Summers has been made, and whose true signature and notarial seal are subscribed and affixed thereto, is a notary public duly authorized, admitted and sworn, residing in Liverpool, to whose acts as such full faith and credit are due.

Given under my hand and seal of office, at Liverpool, this 4th day of February, and year of our Lord one thousand eight hundred and seventy-five.

[SEAL.] CHARLES D. ATWOOD,
U. S. Vice Consul.

Legal notices attached to affidavit.

In the circuit court of the United States, district of South Carolina.
In equity.

CAROLINE CARSON
vs.
ALEXANDER ROBERTSON ET AL.

On motion of Magrath and Lowndes, complainant's solicitors, it is ordered that the defendant, William Hasseltine, do appear, plead, answer or demur to the bill in this case on or before the first Monday of August, A. D. 1874.

It is further ordered that a copy of this order be served, if practicable, on the said defendant, and that a copy be published once a week for three weeks in a newspaper published in Charleston, and in one published in Liverpool.

(Signed) GEORGE S. BRYAN,
U. S. Judge, Dist. of S. C.

13th JUNE, 1874.

OFFICE CLERK OF DISTRICT COURT.

UNITED STATES OF AMERICA,
District of South Carolina, in Circuit Court:

I, J. E. Haygood, clerk of the said court, do hereby certify that the foregoing order is a true copy of the original now on file in this office.

Given under my hand and seal of said court, this 13th day of June, 1874.

(Signed) J. E. HAYGOOD,
C. C. C. U. S. Dist., S. C.

An on the 15th day of May, A. D. 1875, came into court the solicitors for the complainant and defendants, and obtained the following consent order, which order is in the words and tenor following:

Order.

THE UNITED STATES OF AMERICA,
Fourth Circuit, District of South Carolina—In Equity:

CAROLINE CARSON
vs.
ALEXANDER ROBERTSON ET AL.

Upon representation to this court, that it is necessary to the preservation and protection of the plantation "Dean Hall," the subject of this suit, that a considerable sum of money should be advanced, laid out and expended in repairing, cleaning and raising the canals, dykes and dams upon the same, pending the litigation in this cause, and with the consent of counsel of the complainant and of the defendants who have appeared and answered,

It is ordered that it be referred to James E. Haygood, esquire, as special examiner, to enquire and forthwith to report what sum or sums will be necessary so to be advanced, laid out and expended, so as to preserve the said plantation from deterioration, loss and damage during the progress of these proceedings.

And it is further ordered, that upon the confirmation of the said report, and advance of the amount reported for such repairs, &c., that the amount so advanced in pursuance of said report, shall be a lien and charge upon the said property, in preference and priority to all other liens and charges upon the same whatsoever, and that the person or persons so advancing the same sum or sums so reported by the said examiner, shall be at liberty at the termination of this suit, to apply, by petition or motion in this cause, for the enforcement of said lien and charge by sale, at a short day or otherwise as may be advised.

It is further ordered, that upon the filing of the said report, any party to this cause do have leave, upon ten day's notice to the other parties thereto, to move before any judge of this court in vacation for its confirmation.

It is further ordered, that a statement of the amount so expended

and advanced, be filed in this court, and that a copy of this order, together with a copy of the said statement, be recorded in the office provided by law for the recording of mortgages.

May 15th, 1875.

HUGH L. BOND,
Circuit Judge.

We consent.

A. G. MAGRATH.
McCRADY & SON.

And on the 29th day of June, A. D. 1875, came into court Isaac Ball and Mathusin G. Gibbs, and filed the following testimony as regards repairs to Dean Hall, which testimony is in the words and tenor following:

Testimony.

To J. E. HAYGOOD,
Clerk of the Circuit Court of the United States,
Charleston, S. C.:

In the matter of the repairs necessary to preserve Dean Hall plantation from further deterioration, in regard to which our opinion has been asked, we certify we have examined the condition of the river banks on said plantation, particularly the bank on the portion of it known as the mill-pond field, which we estimate to be about ¾ miles long, in which there is a very formidable break of several years' standing, the trunks rotten where not blown out, and the inside of the banks much worn by the action of the waves, and incapable, without being repaired, of resisting the pressure of the water from without, when the support of the water is removed by stopping the breaks; but if the break is not stopped, the waves will, in a short time, wear away the banks. Indeed, in many places now the water flows over the banks. To secure this field from further deterioration, it will be necessary—

1st. To put down seven (7) trunks in the bank.

2nd. To make up the bank on the inside, raising the same above tidewater.

3rd. To stop the break and several minor breaks, (one of these latter being about twenty feet wide.) The main break we estimate to be about seventy (70) feet wide and nine (9) feet deep at low water, and fifteen (15) feet deep at high water. To close this break will be an expensive job, but should be undertaken, as the field contains (150) one hundred and fifty acres of the best land on the plantation, which in a few years more will be worthless if the work of deterioration is allowed to go. We think that eight thousand dollars may be necessary to cover the cost of the whole work. There are several low portions of the bank on the field known as the swamp, which may be raised at a cost of a few hundred dollars suf-

ficiently to prevent further deterioration for the present, and perhaps the sum named above may cover the cost of this also.

R. H. SELBY, *Not. Pub.*
ISAAC BALL,
MATHUSIN G. GIBBS.

Sworn to and subscribed before me this the 29th day of June, 1875.

Trial of cause.

And at the November term, 1875, of the said circuit court, this cause came up for hearing before the honorable Hugh L. Bond and the honorable George S. Bryan, judges of the said court, and after hearing the demurrer of the defendant, William McBurney, and arguments by A. G. Magrath for complainant, and by McCrady and Son for defendants, upon the questions as to whether all the parties were properly before the court, and as to whether the complainant, Caroline Carson, was a citizen of the State of New York, as stated in her bill of complaint, the court decided that it was necessary in this cause to make the assignee of Elias N. Ball, bankrupt, party to this cause, and cause was continued with leave to make the defendant, Ball's assignee, to party under the act of 1872, by supplemental bill. And on the 10th day of October, A. D. 1876, came into court the complainant, Caroline Carson, by her solicitors, McGrath and Lowndes, and obtained the following order, which order is in the words and tenor following:

Order.

In the circuit court of the United States, fourth circuit, South Carolina district.

CAROLINE CARSON
vs.
ALEXANDER ROBERTSON ET AL.

In this case the circuit court having ruled that Elias N. Miller, the assignee in bankruptcy of Elias N. Ball, now deceased, shall be made a party in the said cause by supplemental bill; and the said Elias N. Miller, assignee as aforesaid, not being an inhabitant of or found within the district of South Carolina, nor voluntarily appearing in the above entitled cause, but being an inhabitant of the State of New Jersey, it is therefore ordered, that the said Elias N. Miller, assignee in bankruptcy of the said Elias N. Ball, now deceased, do appear, plead, answer, or demur to the said supplemental bill filed against him within thirty days after service of this order upon him; it is further ordered, that proof of the service of this order on the said Elias N. Miller, assignee as aforesaid, be duly returned to J. E. Haygood, clerk of this court, at his office at the court house, in Charleston, in the State of South Carolina.

10th Oct., 1876. GEORGE S. BRYAN,
U. S. Judge, Dist. of S. C.

Acceptance of service.

Due and legal notice of a copy of the within order, acknowledged this fourteenth day of October, A. D. 1876.

E. N. MILLER, *Assignee.*

Marshal's return.

Served a copy of the within writ on the within named defendant by handing it to him, personally, in due form, Oct. 14th, 1876. A certificate of acceptance of same is hereon endorsed by def't.

JNO. C. BAILEY,
D. U. S. Marshal, District N. Y.

And on the 10th day of October, A. D. 1876, came into court the complainant, Caroline Carson, by her solicitors, Magrath and Lowndes, and filed the following supplemental bill against Elias N. Miller, assignee in bankruptcy of Elias N. Ball, which bill is in the words and tenor following:

Supplemental bill.

United States of America, fourth circuit, district of South Carolina, in the circuit court. In equity.

To the judges of the said court:

Caroline Carson, a citizen of the State of New York, brings this, her supplemental bill of complaint against Elias N. Miller, a citizen of the State of New Jersey, and assignee in bankruptcy of Elias N. Ball, as a party to her amended bill of complaint against Alexander Robertson, John Freer Blacklock, William McBurney, Thomas R. McGahn, citizens of the State of South Carolina, William Hasseltine, a citizen of Great Britain, and Alfred Gillespie, a citizen of the State of Tennessee. And your oratrix, in her said bill of complaint, says:

1. Her husband, William A. Carson, of the parish of St. Johns Berkley, of Charleston county, in the State of South Carolina, did, by his last will and testament, bearing date the eleventh day of March, A. D. 1854, after making certain specific bequests, direct his executors or such one as might qualify to sell the residue of his estate, and of the proceeds of sale to pay his debts, to divide the balance of such proceeds into three equal parts, to hold one such third part in trust for his wife, Caroline Carson, the complainant, during her life, and to hold in trust the other two-third parts for his sons, William Carson and James Petigru Carson, to be paid to them absolutely on their attaining the age of twenty-one years. The rest and residue of his estate, including the remainder in the one-third part to be held in trust for his wife, he bequeathed to his two sons so as to rest absolutely on their attaining the age of twenty-one years. He appointed the defendants, Alexander Robertson and John Freer Blacklock, executors of his will and testamentary guardians of his sons.

Reference is craved to the said will from which all these matters will more fully appear.

2. William A. Carson died on the 17th of August, 1856, and the defendants, Alexander Robertson and John Freer Blacklock, proved his will in the court of ordinary, of Charleston county, and there qualified as executors and proceeded to sell the testator's estate and execute his will. One part of his estate, sold by them, was a valuable rice plantation, not far from the city of Charleston, known as Dean Hall, which they sold to Elias N. Ball, for fifty thousand dollars. For the unpaid portion of the purchase money Elias N. Ball, on the 2nd March, 1857, executed to the said executors three bonds, each in the penal sum of eighteen thousand dollars, and two each in the penal sum of eight thousand dollars. Conditioned the three first named each for the payment of nine thousand dollars, and the two last named each for the payment of four thousand dollars, in five equal successive annual instalments from the 14th Jan'y, 1857, with interest from this date, payable annually. To secure these bonds Elias N. Ball, on the 2nd March, 1857, executed to the said executors a conveyance by way of mortgage of Dean Hall, which mortgage was, on the 11th of March, 1857, duly recorded in the mesne conveyance office of Charleston county.

3. On or before the 4th June, 1857, the said executors had sold the whole of the testator's estate and paid his debts, and they thereupon made distribution of the testator's estate, and in their capacity of executors transferred to themselves, as trustees under the said will, the above-mentioned bonds and mortgage, viz: to themselves, as trustees of Caroline Carson, the complainant, one bond of nine thousand dollars, and one-third interest in one bond of four thousand dollars, and to themselves as trustees of her two sons, for each the same amount in bonds, or in the aggregate thirty-one thousand dollars in bonds. They also transferred to themselves as testamentary guardians of the testator's sons the other said bond of four thousand dollars; they then took and held as trustees the mortgage of Dean Hall, securing the said debt of thirty-five thousand dollars.

4. The said executors at the same time transferred to themselves, as trustees aforesaid of the complainant and her sons, three bonds of Elias N. Ball and W. J. Ball, each in the sum of eleven thousand dollars, bearing interest from the 16th January, 1857.

5. The complainant who, during the late war, adhered to the cause of the Union, early in 1861 left South Carolina and went to New York, where she has ever since resided and had her domicil. She believes her absence from South Carolina was a matter of notoriety, and was probably known to M'r McBurney and his copartner. Her son, William Carson, who came of age after 1863, left South Carolina and the Confederate States before the war and has been absent from them ever since. Her son, James P. Carson, came of age after the late war. John Freer Blacklock was absent from the United States during the whole of the late war.

6. Some time in March, 1863, at Charleston, the defendant, McBurney, acting for the firm of Hyatt, McBurney and Company, the

copartners of which were the said McBurney and his co-defendants, William Hasseline, Thomas R. McGahn, and Alfred L. Gillespie and Edmund Hyatt were copartners, made an agreement with Elias N. Ball for the purchase of the clear title in fees of Dean Hall for one hundred thousand dollars in confederate notes. Thereupon McBurney, for the firm of Hyatt, McBurney and Co., furnished to Elias N. Ball a sum in confederate treasury notes equal nominally on their face to the amount of money due on their said bonds, to enable him to obtain from Alexander Robertson, the above-mentioned bonds and mortgage which Robertson then held as trustee of the complainant and her sons, and the market value of which, in confederate treasury notes, was more than double the said sum. Robertson, in consideration of confederate treasury notes offered to him by Elias N. Ball, surrendered the said bonds and mortgage to him, and Elias N. Ball thereafter on the twenty-third of April, A. D. 1863, conveyed to the defendants, McBurney and Gillespie, in trust for or to the use of Hyatt, McBurney and Company, the said Dean Hall, McBurney being at the time of such conveyance aware of the consideration on which Alexander Robertson, as trustee, had surrendered the said bonds and mortgage. Subsequently Edmund Hyatt released to his copartners his interest in Dean Hall, and received from them a mortgage of it. Satisfaction of the mortgage held by Robertson as aforesaid was not executed until the twenty-first of July, 1866, when it was done by Robertson alone at the suggestion, as the complainant believes, of McBurney, who had reason to expect that these proceedings would be shortly begun.

7. The complainant knew nothing of the above transactions before they occurred, and when she had knowledge of them, repudiated them, and has always done so since. Her sons on coming of age, repudiated them and refused to join in the satisfaction. The complainant's sons, before the bringing of this suit, assigned to her all their interest under the will of William A. Carson.

8. The complainant submits that there was no valid legal satisfaction of the said bonds, and the mortgage securing them; that if there was it was in equity a breach of trust on the part of Alexander Robertson, to surrender the said bonds and mortgage without the concurrence of his co-trustees, and that it was further a breach of trust on his part to surrender them in consideration of confederate treasury notes, and that Robertson is liable to make good all the losses caused by his breach of trust.

9. The complainant further submits that Hyatt, McBurney and Company had full notice of the equities in Dean Hall of herself and her sons, and of the breaches of trust on the part of her trustees, combining with Ball and Robertson, aided and abetted the same and procurred them to be done, and that they consequently can only take Dean Hall subject to the said equities.

10. After the transactions above related, Elias Nonus Ball became a citizen of New Jersey; being as your oratrix charges, still indebted to her because of her said bonds for the purchase of Dean Hall, and

which were unlawfully given back to him by the said Alexander Robertson, in disregard of his duty as trustee in the premises, and without sufficient or lawful consideration therefor; was there some time in 1868, adjudged a bankrupt, and subsequently died on the 22d February, 1872. The defendant, Elias N. Miller, was duly appointed his assignee in bankruptcy, and it is now as such made a party by supplemental bill. Robertson and Blacklock as trustees aforesaid, have never accounted in the premises and are now insolvent.

11. By the depreciation in the value of Dean Hall since the war, has become an insufficient security for the complainant's claim.

In tender consideration whereof, and to the end that the defendants may upon their respective corporal oaths, full, true and perfect answer makes to all and singular the premises, as particularly as if thereto especially interrogated, and that the said Robertson and Blacklock may be required to account with your oratrix as trustees aforesaid, and that the said Robertson and Blacklock may be decreed to be liable touching the aforesaid matters, and that the said bonds of Elias Nonus Ball, and mortgage of Dean Hall securing them, may be set up and decreed to be valid substituting securities, and the said mortgage to be a valid substituting lien on Dean Hall, to secure the payment of the said bonds, and that an account may be had for the amounts due on the said bonds, and the said mortgage of Dean Hall to secure the payment of the said bonds foreclosed, and the said Dean Hall sold to pay the amount found to be due on the said bonds.

May it please your honors (to grant) not only your writ of injunction, but also your writ of subpœna directed to the said Elias N. Miller, assignee in bankruptcy of the said Elias N. Ball, commanding them under a certain pain and upon a certain day therein named, to be and appear before your honors, in this honorable court, then and there to answer all and singular the premises, and to abide and perform such orders and decrees as to your honors shall seem meet.

And your oratrix will ever pray and so forth.

JAMES LOWNDES,
Solicitor of C. Carson.
A. G. MAGRATH,
Of Counsel.

Order pro confesso.

It appearing to my satisfaction that the defendant, Elias N. Miller, assignee of Elias N. Ball, having failed to plead, answer or demur to the within supplemental bill of complaint, on motion of A. G. Magrath, of counsel for complainant, it is ordered that an order, *pro confesso* be entered against the defendant, Elias N. Miller, assignee of Elias N. Ball.

At rules day, 2 April, 1877.

[SEAL.]

J. E. HAGOOD,
Clerk & Special Master.

Trial of cause.

And at the April term, 1877, of the said circuit court, this cause came up for hearing before the honorable Morrison R. Waite, Chief Justice of the United States, and the honorable Geo. L. Bryan, district judge, on motion of M'r McCrady to dismiss the supplemental bill filed in this cause, and order of service thereon, and after hearing argument by M'r McCrady, in favor of said motion, and by M'r A. G. Magrath, contra, the court held that the supplemental bill was in accordance with the act of 1872, and the requirements of the Supreme Court in this cause. Motion to dismiss refused.

And on the 2d day of June, A. D. 1877, came into court the defendant, Wm. McBurney and Thomas R. McGahn, by their solicitors, McCrady and Son, ann proposed an order, which the court refused to sign, but ordered the same to be filed, which order is in the words and tenor following:

Order.

UNITED STATES OF AMERICA.

CAROLINE CARSON
vs.
ALEXANDER ROBERTSON ET AL.

This case having been remanded to the court by the Supreme Court of the United States, with instructions to set aside the decree theretofore entered therein, because of the want of proper parties, and thereupon leave to amend the bill herein, having been granted by this court by order of 13th June, 1874, under which order an amended bill was filed on that day, making other persons, to wit: Thomas R. McGahn, Alfred L. Gillespie, William Hasseltine and Elias N. Miller, parties thereto, and the defendants, William McBurney and Thomas R. McGahn, having been served with subpœna's and filed answers in which they demurred to the said amended bill, and upon argument the demurrers in their said answers having been sustained by the court, on the 3d February, 1876, and leave then given to the complainant again to amend her said bill, and since the said leave so given on the 3rd of February, 1876, no further proceeding having been taken by the complainant as to the defendants hereinafter named, and after notice of intention to make such motion given by the defendants, William McBurney and Thomas R. McGahn, on the 15th day of February, 1877, it is now on motion of McCrady and Son, solicitors for all the defendants who answered in the cause, ordered that the said bill be and the same is hereby dismissed for want of prosecution as to them.

Which order is refused.

Trial of cause.

And at the April term, 1878, of the said circuit court, this cause came up for hearing before the honorable Hugh L. Bond, circuit judge presiding, upon the following statement of facts agreed upon:

Statement of facts.

THE UNITED STATES OF AMERICA,
Fourth Circuit, District of South Carolina:

CARSON
vs.
ROBERTSON ET AL.

Memorandum of agreement as to testimony on trial.

Reserving, not waiving the objection of the defendants, William McBurney and Thomas R. McGahn, to the manner in which the complainant has attempted to make the absent defendants, Alfred L. Gillespie, William Hasseltine and Elias N. Ball parties to this cause, and also their objection to proceeding herein without having been served with subpœna to supplemental bill, nor made parties thereto, nor notified thereof, it is agreed, by and between the counsel for the complainant and the counsel for the said defendants, William McBurney and Thomas R. McGahn—

1. That upon the hearing of this case upon its merits, that the execution of the will and deeds in question shall be admitted without further proof than their production, to wit:

(a). The will of William A. Carson.

(b). The mortgage of Elias N. Ball to Alexander Robertson and John F. Blacklock to secure purchase money.

(c). The deed from Elias N. Ball to William McBurney and Alfred L. Gillespie.

(d.) Bargain, sale and assignment of Edmund Hyatt to William McBurney, William Hasseltine, Alfred L. Gillespie and Thomas R McGahn.

(e.) Deed of appointment by way of mortgage by William McBurney and Alfred L. Gillespie to Edmund Hyatt.

And further, that the copies thereof, or of any of them which were admitted in the former trials of this case, shall be admitted into this hearing without requiring either party to produce the originals.

2. That the copies of account of Alexander Robertson and J. F. Blacklock with the estate of William A. Carson, as the same were in evidence in the former trial of this case before the circuit court, shall be admitted in evidence without further proof.

3. That is, shall be received as the testimony of the defendants, William McBurney and Thomas R. McGahn, that to pay the purchase money of the plantation Dean Hall, they sold a large amount of cotton, to wit: six hundred bales, the proceeds of which

were deposited with their other money in the South Carolina bank, and their checks were drawn against the same.

4. That the paper marked exhibit X, to wit: note of Elias N. Ball to William McBurney, dated 22nd April, 1863, shall be received in evidence, and that the body of the same, that is, all but the signature thereto, is in the handwriting of the defendant, Alexander Robertson. That any party to this cause shall be at liberty to refer to any other testimony taken and used in the former trials thereof, as in evidence at this hearing.

A. G. MAGRATH,
Sol. for Caroline Carson.
McCRADY & SON,
Sol. for def'ts,
Wm. McBurney & Thomas R. McGahn.

3 DEC., 1877.

Exhibit X.

CHARLESTON, April 22, 1863.

MR. WM. McBURNEY:

DEAR SIR: I have to leave town, and I beg to authorize you to settle up with Mr. A. Robertson, ex'r of W. A. Carson, in full of my bonds held by him, and you will oblige yours, &c.,

ELIAS N. BALL.

The above letter in hand-writing of Mr. Alexander Robertson, and signed by E. N. Ball.

And after hearing the pleadings and arguments of A. G. Magrath for the complainant, and McCrady and Son for the defendants, the court rendered the following decree, which decree is in the words and tenor following:

Decree.

In the circuit court of the United States, fourth circuit, district of South Carolina. In equity.

CAROLINE CARSON
vs.
ALEXANDER ROBERTSON ET AL. } April term, 1878.

On hearing the pleadings, evidence, and arguments of counsel in this cause, it is now ordered, adjudged, and decreed that the bonds of Elias N. Ball to Alexander Robertson and John F. Blacklock, described in the pleadings and secured by the mortgage of Dean Hall are valid, unsatisfied, and subsisting securities, and that the debts secured thereby are due and payable to the complainant, and that the mortgage of Dean Hall, described in the pleadings, given by Elias N. Ball to secure the said bonds is a valid, unsatisfied, and subsisting mortgage securing the payment of the said bonds.

It is further ordered, adjudged, and decreed that the entry of sat-

isfaction made on the said mortgage is null and void, and that the parties to this cause, in whose possession or control the said bonds or any of them and the said mortgage may be, do surrender them to the complainant, and that the same are her property.

It is further ordered, adjudged, and decreed that the sum of $31,000, with interest thereon, payable annually, from the 23d April, 1863, is now due and payable on the said bonds to the complainant, and that the said sum is a lien and charge on Dean Hall plantation in favor of the complainant.

It is further ordered, adjudged, and decreed that the parties in interest have leave until the first day of August, 1878, to pay the said debt, and that if it be not paid on that day the equity of redemption of all the parties to this suit and of Hyatt, McBurney & Co. in the said Dean Hall plantation be forever barred and foreclosure, and that the marshal of this court do then sell the said plantation, after due notice, at public auction in the city of Charleston, on the following terms, viz: one fourth cash, and the balance in three equal successive annual instalments, the credit portion to bear interest payable annually, and to be secured by a mortgage of the said plantation, and that he convey the property to the purchaser, and that he do, after paying the expenses of the said sale, apply the cash proceeds to the satisfaction of the complainant's debt, if so much be necessary, and that if necessary he assign to her the bonds of the purchaser in satisfaction of her debt, or so much of them as may be necessary, and that any remaining after the satisfaction of her claim be held subject to the order of the court as to the right of the parties entitled thereto, and who may apply for orders for the delivery of the same, but the bonds assigned to the complainant shall be a first lien upon Dean Hall.

It is further ordered, adjudged, and decreed that if the complaint become the purchaser of Dean Hall at the said sale, the marshal do set off her said debt or so much as may be necessary against her bid.

It is further adjudged, and decreed that the defendants, except John F. Blacklock, pay the costs of this suit, and that the defendant Blacklock pay his own costs.

10 May, 1878. HUGH L. BOND.

And on the 10th day of May, A. D. 1878, came into court the defendants, William McBurney and Thomas R. McGahn, by their solicitors, McCrady and Son, and filed the following claim and allowance of appeal from decree in this cause, which claim and allowance of appeal is in the words and tenor following:

Claim and allowance of appeal.

In equity.

THE UNITED STATES OF AMERICA,
Fourth Circuit, Dist. of So. Ca:

CAROLINE CARSON
vs.
ALEXANDER ROBERTSON, JOHN FREER BLACKLOCK, WILLIAM McBURNEY, THOMAS R. McGAHN, WILLIAM HASSELTINE, ALFRED L. GILLESPIE, and ELIAS N. MILLER. } Bill of relief.

Claim and allowance of appeal from decree:

And now comes William McBurney and Thomas R. McGahn, of the above-named defendants, after a final decree entered in this cause, and show to the court the matter in dispute exceeds the sum of five thousand dollars (that Alexander Robertson and John Freer Blacklock, sever and decline to appeal, and that neither William Hasseltine, Alfred L. Gillespie, nor Elias N. Ball have appeared in the cause nor been served with process, save by publication,) and thereupon the said William McBurney and Thomas R. McGahn appeal from the said final decree to the Supreme Court of the United States, to be holden at Washington on the second Monday in October next, and the same is accordingly allowed, and the appellant is ordered to serve the usual citation according to law.

10 May, 1878. HUGH L. BOND, *Ct. Judge.*
RUTLEDGE & YOUNG,
for A. Robertson & J. F. Blacklock.

And on the 10th day of May, A. D. 1878, came into court the defendants, William McBurney and Thomas R. McGahn, and filed the following appeal bond, which bond is in the words and tenor following:

Appeal bond.

In equity.

THE UNITED STATES OF AMERICA,
Fourth Circuit, District of South Carolina:

CAROLINE CARSON
vs.
ALEXANDER ROBERTSON, JOHN FREER BLACKLOCK, WILLIAM McBURNEY, THOMAS R. McGAHN, WILLIAM HASSELTINE, ALFRED L. GILLESPIE, and ELIAS N. MILLER. } Bill for relief.

Know all men by these presents that we, William McBurney,

Thomas R. McGahn, and John S. Fairly are held and firmly bound unto Caroline Carson in the full and just sum of three thousand dollars, to be paid to the said Caroline Carson, her certain attorney, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals and dated this tenth day of May, in the year of our Lord one thousand eight hundred and seventy-eight.

Whereas lately, at a circuit court of the United States, fourth circuit, district of South Carolina, holden at Charleston, in a suit depending in said court between Caroline Carson, complainant, and Alexander Robertson, John Freer Blacklock, William McBurney, Thomas R. McGahn, William Hasseltine, Alfred L. Giliespie, and Elias N. Miller, a decree was rendered against the said Alexander Robertson, John Freer Blacklock, William McBurney, Thomas R. McGahn, William Hasseltine, Alfred L. Gillespie, and Elias N. Miller, and the said William McBurney and Thos. R. McGahn having obtained an allowance of appeal, and filed a copy thereof in the clerk's office of the said court to reserve the decree in the aforesaid suit, and a citation directed to the said Caroline Carson, citing and admonishing her to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next.

Now the condition of the above obligation is such, that if the said William McBurney and Thomas R. McGahn shall prosecute the said appeals to effect, and answer all damages and costs if he the said William McBurney and Thomas R. McGahn fail to make their said pleas good, then the above obligations to be void, else to remain in full force and virtue.

[SEAL.] WM. McBURNEY.
[SEAL.] THOMAS R. McGAHN.
SEAL.] JNO. S. FAIRLEY.

Sealed and delivered in presence of—

J. E. HAYGOOD,
C. C. C., U. S. Dist. S. C.

Approved by—

GEO. S. BRYAN,
U. S. Judge, Dist. of S. C.

11 JULY, 1878.

Citation.

THE UNITED STATES OF AMERICA,
Fourth Circuit, Dist. of So. Ca.:

In equity.

CAROLINE CARSON
vs.
ALEXANDER ROBERTSON, JOHN FREER BLACKLOCK, WILLIAM McBURNEY, THOMAS R. McGAHN, WILLIAM HASSELTINE, ALFRED L. GILLESPIE, and ELIAS N. MILLER. } Bill for relief.

Claim and allowance of appeal from decree.

And now comes William McBurney and Thomas R. McGahn, of the above named defendants, after a final decree entered in this cause, and show to the court that the matter in dispute exceeds the sum of five thousand dollars; that Alexander Robertson and John Freer Blacklock sever and decline to appeal, and that neither William Hasseltine, Alfred L. Gillespie nor Elias N. Ball, have appeared in the cause, nor been served with process save by publication, and thereupon the said William McBurney and Thomas R. McGahn appeal from the said final decree to the Supreme Court of the United States to be holden at Washington, on the second Monday in October next, and the same is accordingly allowed, and the appellant is ordered to serve the usual citation according to law.

10th May, 1870.

HUGH L. BOND,
Circuit Judge.

RUTLEDGE & YOUNG,
For Alexander Robertson, J. F. Blacklock.

In equity.

UNITED STATES OF AMERICA,
Fourth Circuit, District of South Carolina:

CAROLINE CARSON
vs.
ALEXANDER ROBERTSON, JOHN FREER BLACKLOCK, WILLIAM McBURNEY, THOMAS R. McGAHN, WILLIAM HASSELTINE, ALFRED L. GILLESPIE and ELIAS N. MILLER. } Bill for relief.

Citation on appeal.

TO CAROLINE CARSON:

You are hereby cited and admonished to be and appear at the Supreme Court in the United States, to be holden at Washington,

on the second Monday in October next, pursuant to a claim and allowance of appeal filed in the circuit court of the United States for the district of South Carolina, wherein Wm. McBurney and Thomas R. McGahn are plaintiffs in error, and you are defendant, (Alexander Robertson, John Freer Blacklock have severed and declined to appeal, and William Hasseltine, Alfred L. Gillespie and Elias N. Miller not having appeared in the cause nor having been served with process save by publication) to shew cause, if any there be, why the decree in said appeal mentioned, should not be corrected, and speedy justice should not be done to the parties.

Witness the honorable Hugh L. Bond, judge of the circuit court, this 10th day of May, 1878.

HUGH L. BOND.

Certificate of Clerk.

In the circuit court.

UNITED STATES OF AMERICA,
District of South Carolina, fourth circuit:

I, J. E. Haygood, Clerk of the circuit court of the United States, for the district of South Carolina, do hereby certify that the foregoing is a true and correct copy of the original bill, subpœnas, demurrer of William McBurney, W. J. Ball, and answers of William McBurney, J. W. Ball, J. F. Blacklock and Alexander Robertson, replication of the complainant, Caroline Carson, together with the proceedings of the court, testimony, decree, claim and allowance of appeal, supplemental transcript of records and accounts of the executors, as appears from the original printed transcript of the record, sent up to the Supreme Court in this case.

I further certify that the foregoing also contains a true and correct copy of the records, proceedings, and of the decree of the amended bill under the mandate of the Supreme Court in the case of Caroline Carson, complainant, against Alexander Robertson et al., defendants, rendered as aforesaid, together with all the proceedings had in the cause relating to the same.

Given under my hand and the seal of said court, at clerk's office, in the city of Charleston, South Carolina, this, the 20th day of July, A. D. 1878.

[SEAL.]

J. E. HAYGOOD,
C. C. C. U. S., Dist. S. C.

Supreme Court of the United States

No. 780.

William McBurney and Thomas R. McGahan, Appellants,

vs.

Caroline Carson.

ASSIGNMENT OF ERRORS.

I. AS TO PRACTICE AND PLEADING.

1. That Demurrer of the Appellants to the amended Bill, filed 13th June, 1874, having been sustained on the 15th February, 1876, and the Appellants not having been made parties to the Bill filed against Elias N. Miller, that the Bill of 13th June, 1874, should have been dismissed for want of prosecution as to them, and the Circuit Court erred in not so dismissing the said Bill.

2. That the practice Act of 1872, has no application to this suit, as it was commenced years before the passage of that Act; and that hence, the other parties, who this Court has declared indispensable, not being inhabitants of nor found within the districts in which the suit is brought, nor voluntarily appearing therein, could not be made parties

by service or publication under that Act, and the Circuit Court erred in not so ruling.

II. AS TO THE MERITS.

1. That the Circuit Court erred in adjudging and decreeing that the bonds of Elias N. Ball to Alexander Robertson and John F. Blacklock, described in the pleadings and secured by the mortgage of Dean Hall, are valid, unsatisfied and subsisting securities, and that the debts secured thereby are due and payable to the Complainant; and that the mortgage of Dean Hall, described in the pleadings, given by Elias N. Ball to secure the said bonds, is a valid, unsatisfied and subsisting mortgage, securing the payment of the said bonds.

2. That the Circuit Court erred in adjudging and decreeing that the entry of satisfaction made on the said mortgage is null and void, and that the parties to this cause in whose possession or control the said bonds or any of them and the said mortgage may be, do surrender them to the Complainant, and that the same are her property.

3. That the Circuit Court erred in adjudging and decreeing that the sum of $31,000, with interest thereon, payable annually, from the 23d April, 1863, is now due and payable on the said bonds to the Complainant, and that the said sum is a lien and charge on Dean Hall Plantation in favor of the Complainant.

EDWARD McCRADY,
EDWARD McCRADY, JUN'R,
For Appellants.

SUPREME COURT OF THE UNITED STATES.

NO. 780.

WILLIAM McBURNEY AND THOMAS R. McGAHN,
APPELLANTS,

vs.

CAROLINE CARSON.

ARGUMENT OF EDWARD McCRADY, Junr., FOR APPELLANTS.

This cause has been up to this Court once before, (*Carson vs. Robertson, 19 Wall, 92,*) and in remanding it to the Circuit the Court said that if there were no defects of parties, on account of which the decree was then set aside, that the Court would still have had great difficulty in disposing of the case upon the pleadings and proofs there before it, and expressed the hope that if the case should be brought here again that these objections would in the meantime be obviated. Upon this occasion there is certainly no fault of the clerk for the manner in which the transcript was made up, as there was in the last, but we regret that the record, however fairly transcribed, is again "in a singularly defective and confused condition." 1 2

I.—Pleadings and Practice.

Upon the receipt of the mandate upon the last appeal, leave was granted by the Circuit Court to the complainant to amend her former bill or to file an amended bill, as the case might require, (p. 67,) and on the 15th June, 1874, she filed an amended bill, in which the persons who had been held indispensable parties were named defendants, (p. 68.) But in this amended bill the bankruptcy and death of Elias N. Ball,

both of which had taken place since the filing of the original bill, was alleged by way of amendment (p. 70.) The appellant Mr. McBurney in his answer demurred to the introduction
3 of these facts, which had taken place subsequently to the filing of the original bill, by amendment, and insisted that they could only be brought forward in a supplemental bill, (p. 76.)

This Court had held that Alfred L. Gillespie and Elias N. Ball, are indispensable parties, but as neither Gillespie nor Miller, the assignee and representative of Ball, were inhabitants of and as neither could be found in the District in which the suit was brought, the complainant obtained an order on the 13th June, 1874, that they should plead, answer or demur to
4 the bill in this case within a given time, and that copies of the order be served, if practicable, on the parties, and copies of it published in certain newspapers, (p. 73.) Under this order, service and publication was made, and the case proceeded with by the complainant as if these defendants had thus been made parties. To this the appellants objected that the Practice Act of 1872 had no application to the parties in this litigation, and had been passed after the commencement of the suit.

The appellant, McGahan, also denied in his answer that
5 Caroline Carson was at the time of the filing of this amended bill, a citizen of New York, and averred that she had left her domicil in New York, and that she was then to be regarded as a citizen of South Carolina. But as Caroline Carson returned to New York during the progress of the cause, the point was not pressed below, and is now waived.

On the 1st April, 1875, the complainant filed her replication to the answers of the appellants, and the cause thus stood at issue between them. (p. 89, 90.)

The two other questions of pleading and practice above
6 mentioned, came on to be heard before the Circuit Court on the 3d February, 1876, when the demurrers of the appellants were sustained, but the complainant was again allowed to institute other proceedings, properly to bring these indispensable parties before the Court.

The appellants insist that as to them the records ends here.

The complainant's replication to their answers remains on file and the record is as to them complete. A bill purporting to be a supplemental bill, it is true, was filed on the 10th October, 1876, but the appellants were not made parties to it; had no notice of it, and knew nothing about it; it was filed against Elias N. Miller, the assignee of Ball, and he only was made a party to it. (p. 96.) The appellants, therefore, on the 2d June, 1877, moved to dismiss, for want of prosecution, the amended bill filed on the 13th June, 1874, and to which they had answered and demurred. This motion was refused (p. 100,) and the appellants forced to go to trial with the record again in this irregular and insufficient condition. 7

Before discussing the merits we again object, then, to matter appearing on the record. 8

(1.) That demurrer of the appellants to the amended bill, filed 13th June, 1874, having been sustained on the 15th February, 1876, and the appellants not having been made parties to the bill filed against Elias N. Miller, that the bill of 13th June, 1874, should have been dismissed for want of prosecution as to them.

(2.) That the Practice Act of 1872 has no application to this suit, as it was commenced years before the passage of that Act, and that hence the other parties, who this Court has declared indispensable, not being inhabitants of nor found within the district in which the suit is brought, nor voluntarily appearing therein, could not be made parties by service or publication under that Act, and that the cause is again here without the parties, declared indispensable by the Court. 9

(1) That demurrer of the appellants to the amended bill, filed 13th June, 1874, having been sustained on the 3d February, 1876, and the appellants not having been made parties to the bill filed against Elias N. Miller, that the bill of 13th June, 1874, should have been dismissed for want of prosecution. 10

a. Demurrer sustained.

It will be observed, that the appellant, McBurney, (p. 75,) demurred to the amended bill, because that it set out by amendment, facts which had occurred since the commencement of the suit. The entries in the journal of

the Court, (p. 95) show, that the questions whether the parties were properly before the Court was argued at the November term, 1875, and that the Court announced its decision, that it was necessary to make the assignee of Ball a party by supplemental bill, thus sustaining our demurrers. This would have ended the case finally, if the cause had not been continued, with leave to file a supplemental bill. It *did* end the cause as to the appellants, until the replication to their answers was withdrawn, and some further proceedings were taken as to them by the complainant under her leave.

The appellants now occupy the anomalous position before the Court of having their demurrers to the bill sustained, and yet a decree on the same bill against them—a judgment *for* them on the demurrer, and a judgment *against* them on the merits.

b. The Bill filed against E. N. Miller not a Supplemental Bill.

When our demurrers were sustained, leave was given the complainant to bring in the assignee of Ball by a supplemental bill. But the bill filed against Ball is an original, not a supplemental bill. In the introductory part of the bill, it is said, "Caroline Carson, a citizen of New York, brings thus her *supplemental bill* of complaint against Elias N. Miller and as a party to her amended bill of complaint." But the bill which follows conforms to no rule or precedent in regard to supplemental bills.

Lord Redesdale says, (Mit. Pl. 78 1816):

"A bill for the purpose must state the original bill, the proce dings upon it, the event which has determined the interest of the party by or against whom the former bill was exhibited, and the manner in which the property has vested in the person become entitled. It must then show the ground upon which the Court ought to grant the benefit of the former suit against the person so become entitled, and pray the decree of the Court adapted to the case of the plaintiff in the new bill."

Cooper Pl., p. 83:

"A supplemental bill must state the original bill, or rather the parties and prayer of it, and the proceedings thereon, and, if the supplemental bill is occasioned by an event subsequent to the original bill, it must state that event, and the consequent alteration with respect to the parties, and, in general the supplemental bill must pray that all the defendants may appear and answer to the charges it contains, and that the plaintiff may have the benefit of the former proceedings."

Maddox's Ch., 525:

"A supplemental bill must state the original bill, and the proceedings thereon, and, if the supplemental bill is occasioned by an event subsequent to the original bill, it must state that event, and the consequent alteration with respect to the parties, and, in general, such bill pray that all the defendants may appear and answer to the charges it contains." 15

The rule is stated in the same words, in *Story's Equity Pl.*, and in *Equity, Draughtsman, 402*, and see §348; *Eanl. Ch. Fl. and Pr., 1673, 1677*, and 47 *Rule of Equity* of this Court.

The form in which these statements in the bill are to be made is thus given in *Newland Ch. Pr., 44.*

"Humbly complaining show, etc., that your orators did, on or about the day of , exhibit their original bill of complaint in this honorable Court, thereby *stating as therein particularly stated*, praying (*state the prayer verbatim*), as in and by the said bill of complaint now remaining of record in this honorable Court, relation being thereto had, may and will appear." 16

See similar forms *Equity Draughtsman, Supplemental Bill.*

Lord Elden laid down the further rule in regard to supplemental bills, viz.: that a plaintiff filing a supplemental bill has no right to repeat anything of the original statement, or to do more with reference to that than merely to state the decree, if there had been a decree, and if before decree, no more than the prayer of the bill. See *Onge vs. Truelock, 2 Molloy, 31, Anderson vs. Wallis, 6 Jur., 900.* 17

Examined by these rules, the bill against E. N. Miller is a supplemental only in name. It contains what it ought not, and does not contain what it ought. It purports to be a supplemental to the complainant's amended bill, but the amended bill was demurred to, and demurrer sustained. No proceedings by way of *supplement* should therefore have been had on that bill until it was itself perfected.

But if the amended bill had been in a condition upon which to build, the supplemental bill does not rest upon it for its statements. It does not affirmatively state, that there is such a bill. It refers to no statements made in the amended bill, but sets out the whole original statement of the amended bill, though in *totidem verbis*, yet as its own allegations. It makes no distinction in its allegations as to what happened before the filing of the original bill, and what took place after. It 18

not only does not set out the prayer of the original bill as it should, but does not even refer to it.

19 *c. Appellants not made parties to the Supplemental Bill.*

But if the bill filed against Elias N. Miller had been properly framed as a supplemental bill, and had been based upon a sound bill of record, it should have made the appellants parties to it. As we have just seen, *Cooper*, *Maddox* and *Story* say, that in general, a supplemental bill must pray that *all* the defendants may appear and answer. This, it is true, is not necessary where the supplemental bill is filed for the mere purpose of adding formal parties.

In *Dyson v. Morris*, *1 Hare*, *413*, Sir J. Wigram, V. C., thus
20 states the distinction to be observed.

"If compelled, which I am not, to express an opinion upon that point, I should rather incline to say that the cases in which the parties to the original bill were necessary parties to a supplemental, were those in which the interests of the original defendants required that such new parties should be before the Court, and that the cases in which the parties to the original bill were not necessary parties to the supplemental bill, were those in which the new parties are brought before the Court in respect of the interest of the plaintiff, or of the new defendants."

In the case of *Wilkinson v. Fowkes*, reported both in *9 Hare*, *193*, and *12 Eng. Law and Eq.*, *184*, the full text of
21 which is added as a note to the last edition of *Story's Eq. Pleadings*, by Redfield, p. 335, this point is fully discussed, and all the authorities up to that time, (1851), carefully reviewed by vice Chancellor Turner, who thus concludes:

"Different reasons are assigned, in these cases, for the different decisions, but, in substance, the question in all of them has been, whether the alteration in the record affected the position or the inteaests of the original defendants. The language of Lord Redesdale has been varied, but his distinction does not appear to me to have been shaken. By those distinctions I shall abide in deciding the present case, believing that the attempt to lay down more definite rules upon a matter which must in all cases be governed by circumstances varying in each particular case, will only lead to increased
22 confusion.

"Adopting, then, Lord Redesdale's position, I have to consider whether, in this particular case, the interests of the original defendants can be affected by the alteration introduced by the supplemental bill."

The facts of this case are so analagous to ours that I continue to quote. The Vice-Chancellor goes on:

"Now, the original bill is filed by an heir against the defendant, as a purchaser from his ancestor, for the purpose of setting aside his contract and deeds of purchase. At the hearing, it was objected that the personal representative of the ancestor was a necessary party to the suit, and I held the objection good, as the bill alleged that the purchase money to be in part unpaid, and I therefore considered that the personal 23
representative had an interest in the question whether the contract was good or not. The objection having been allowed, the supplemental bill has been filed by the heir against the personal representative only; the purchaser, therefore, has no opportunity to raise any question between himself and the personal representative which may not have been raised in the original suit. His interest, therefore may be affected, if the nature of the suit admits of any such question being raised. It will not, indeed, be affected if this bill be dismissed; but, if the transaction be set aside, may not the purchaser have a right to insist upon, against the personal representative, which may be preliminary to any decree against him? May he not have rights against the plaintiff himself, which could not be set up in the absence of the personal representative? I think that he may, or, at all events, that he is entitled to state the grounds on which he contends that he may, and, therefore, most reluctantly, I feel compelled to 24
allow the objection."

This Court has constantly refused to allow questions decided on one appeal to be re-opened on a second. A second appeal brings up nothing for re-examination, except the proceedings subsequent to the mandate. Needful explanations may be derived from the original record, but the re-examination cannot extend to anything that was decided in the antecedent appeal. *The Lady Pike, 96 U. S., 462.* When the case was before this Court on the former appeal, we objected to the decree which had been made by the Circuit Court, 25
because, among other things, that the appellants were charged with fraud and collusion with Elias N. Ball, and yet that Ball had not been made a party to the suit. We urged, that it was in evidence that the purchaser had paid Ball in checks on the Bank of South Carolina, but that there was not a tittle of evidence that the bonds in question were paid by Ball in that currency, except the answer of Robertson, which was no evidence against Ball or the appellants; that Ball may have paid Robertson gold or other unquestioned money to release the mortgage for all that the record showed; that the pur- 26
chasers had paid him enough to have enabled him to do so. But that, however that might be, we were entitled to have him made a party to answer. This Court sustained our objection, and Mr. Justice Swayne, in delivering the opinion of the Court, says, (*19 Wall., 105*).

"The bill charges fraud and conspiracy, and that he (E N. B.) was a party to them. It denies that the mortgage was paid; alleges that the bonds are still in force, avers that the release was a nullity and seeks to enforce the mortgage.

If these allegations are maintained, the whole amount will be rehabilitated against
27 him. He is entitled to an opportunity to repel these imputations, and to protect himself if he can do so. *His vendees are entitled to his aid. His defence is their defence.* It does not appear whether his deed to McBurney and Gillespie contains the usual covenants of title. If so, he would be liable over to his grantee in the event of the mortgage being enforced. This would be an additional reason for his being a party when the case is disposed of.

The Court has thus already decided that the interest of the appellants are affected by Ball's presence or absence. As in the case of *Wilkinson vs. Fowkes*, the question of the necessity of his presence in the case has already been discussed and determined, and it was determined that he or his personal
28 representative had an interest in the question at issue. But not only so; the Court went further and declared that his vendees are entitled to this aid; that his defence is their defence, and on this account remanded the cause with directions to proceed in uniformity with its opinion. In pursuance of this leave the appellants filed an amended bill in which they allege that Ball had become bankrupt, and had died at a time subsequent to the filing of the original bill. We demurred to this, that on well established principles of pleadings, such an allegation could only be made by supplemental bill, and not by
29 amendment. Our demurrer was sustained, and the appellants were thereupon out of Court until some proceedings were taken against them. None have been had. A supplemental bill has been filed alleging Ball's bankruptcy and death, but the appellants were not made parties to it. There was no accident or mistake about this. We moved to dismiss proceedings against them for want of prosecution, as no further steps in the cause had been taken as to the appellants. The complainant met the issue fairly, and denied that the appellant had any concern with the supplemental bill, and so the Cir-
30 cuit Court ruled, and he was required again to go into the merits of the case without the aid of Ball or his representative, to which the Court had declared us entitled, and without *his* defence which this Court had declared was *our* defence.

The supplemental bill alleges that Ball is bankrupt. We do not know it; it alleges that he is dead; there is no evi-

dence of the fact. The bill charges us with conspiring with him to defraud the complainant. May we not throw back the charge and say she is conspiring with Ball to defraud us? Why not have made us parties to the supplemental bill at the 31
first? Why not have made us so when we objected to going on without? Would not prudence have suggested that it was at least safest to do so? Has the complainant purposely kept us from the defence to which the Court had declared us entitled?

It has been declared that we are entitled to Ball's defence, but instead of having it we are put off with a *pro confesso* against one who, there is no evidence is his assignee, executor, administrator or heir. Nor have we been allowed an opportunity to inquire. 32

The question whether process to the original defendants is necessary upon supplemental bill, has twice lately been passed upon by this Court. In *French, Trustee vs. Hay, et. al., 22 Wall, 246–7*, it is said new process is necessary unless waived, but in *Shaw vs. Bill, 95 U. S., 14*, the general rule is restricted to cases where *new parties* are brought in. This is exactly our case, and under these decisions the appellants were entitled to have been joined with the new parties, and to have answered the bill by which they are charged with collusion and conspiracy with Ball. 33

(2.) There is another practical difficulty in proceeding in this cause, which as we understand, this Court anticipated in sending it back. If the complainant had properly framed her proceedings to avail herself of the opportunity afforded of bringing the necessary parties before the Court as required, she would still have met with the difficulty of compelling their attendance, and her inability to proceed without their voluntary appearance. To meet this difficulty she proceeded upon her amended bill under the Practice Act of 1872, to 34
advertise and serve these parties, Ball, Gillespie, and Haseltine; and the question arises whether that Act applies to this suit which was commenced long before its passage.

In the case of *Dash vs. Van Kleck, 7 Johns, 477*, which was an action against a sheriff upon an escape, and to which

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In the case of *Dash vs. Van Kleck, 7 Johns, 477*, which was an action against a sheriff upon an escape, and to which

action the sheriff pleaded an act, in bar of the action which had been passed after the suit had commenced, the plea was overruled. Kent, C. J., saying :

35 "As this Act was passed not only after the escape in question but after suit brought, it cannot apply to and govern this case but in one of two ways. It must be considered either as creating a new rule of government of the past case or as declaring the interpretation of the former statutes for the direction of the Courts.

I think it can be shown upon principles of law and the constitution the Act cannot be adjudged to operate in either of those points of view, and I should be unwilling to consider any act so intended unless that intention was made manifest by express words, *because it would be a violation of fundamental principle, which is never to be presumed.*"

In *Wood vs. Oakley, 11 Page*, the complainant omitted to make certain judgment creditors of the mortgagor parties to the suit. and it was held that an act passed after the com-
36 mencement of the suit, which act made such creditors unnecessary parties, did not apply to this case, as the action had been commenced before its passage.

Chan. Walworth, at p. 403, says :

"It is a general rule in the construction of statute that they are not to have a retrospective effect so as to impair previously acquired rights. *And Courts of justice will apply new statutes only to future cases which may arise, unless there is something in the nature of the new provisions adopted by the Legislature, or in the language of such new statute which show that they were intended to have a retrospective operation* The question was fnlly considered by the Supreme Court of this State in *Dash vs. Van Kleeck*, (7 *Johns*, 474,) and it is unneccessary for me to refer to the authorities which were
37 cited and commented upon in this case."

In Bales vs. Stearns, 23 Wendell, 482, it was said :

In *Jackson ex dem Palmer vs. Coe*, 5 *Wendell*, 101, this Court held that in an action of ejectment brought, before the Revised Statutes went into effect, the defendant could not take her second trial, of course, as provided by 2 R. S. 235, 2nd Ed , §36–37, etc. The decision is in accordance with a principle which we decidedly approve, viz : that a statute which alters the form or effect of an action or proceeding, though it contain general words of sufficient compass to comprehend past or pending actions, shall not in construction be extended to them, provided there be any other subject upon which it may operate ; *in short, that statute never should be so construed as to effect even pending remedies*, unless it either expressly declare such to be its objects or there remain no pro-
38 spective remedy upon which it operates "

In *Sayre vs. Wilson, 8 Wendell*, at p. 664, Ch. J. Savage says, it cannot be denied that the statute in question creates a new rule, *and the essence of a new law is that it forms* a rule for future cases.

In *The People vs. Carnal, 6 N. Y. Rep., (2 Seldon,) 463,* it was held:

"A statute authorizing a writ of error in behalf of the people to review any judgment in favor of a defendant upon any indictment for a criminal offence, except where such a defendant shall have been acquitted by a jury, held not to authorize such writ to review a judgment rendered prior to the passage of the statute."

Aud in *Trist vs. Cabenas, 18 Abbott Pr. Rep., 143:*

"In applying statutes affecting remedies, proceedings already pending at the time of their enactment, are to be deemed exempt from their operation unless a contrary intent appears.

In the late case of *Kent vs. Gray,* 53 N. H., 576, it was held:

A statute allowing suits to be amended by striking out names of some of the plaintiffs, cannot be constitutionally applied to an action pending at the time of its passage, to recover a penalty given by a statute to any person who will sue for the same."

Judge Porter, in his edition of Dwarris on Statutes, p. 154, observes:

"But even remedial statutes are to be deemed prospective in their operation, and are not to be applied to proceedings pending at the time of their enactment, unless a contrary intent appears."

If then the question of the application of the Practice Act of 1872, to cases pending at the time of its passage were an open one, the authorities we have cited clearly show that that Act could not apply. But both parties urged before this Court on the former appeal that the Act would not apply, and as we understand this Court on remanding the cause, anticipated the point, and have distinctly said that it does not apply.

Mr. Justice Swayne, delivering the opinion of the Court, says:

"The Act of Congress of June, 1873, was passed several years after this bill was filed. The Thirteenth Section has, therefore, no application to the question of parties in this litigation."

And Mr. Justice Bradley, in *Williams vs. Bankhead,* in the same volume, *(19 Wall, 571,)* at the least expresses a doubt if it can apply to proceedings already commenced at its passage.

II.—MERITS.

We come now to discuss the merits of the case, as best we
43 may, without the aid of the defence of Ball, to which this Court has declared us entitled—to defend ourselves on the merits of a bill to which our demurrer has been sustained, and so remains of record. The Court will perceive that this is not a mere matter of form—that it is a matter of substance. The plaintiffs' case is that we are answerable, because Ball paid his indebtedness to her trustees, as she insists that Robertson and Blacklock are, in Confederate currency, which they were not authorized to accept. Supposing the appellants liable at all, the natural and logical order of liability certainly
44 is, first, Robertson and Blacklock—next, Ball, and then the appellants' property. Robertson and Blacklock answered the first bills, but in this as if willing to leave the appellants to bear the burden of their liability, or to force them to assume their defence, they allow *pro confesso* to be taken against them, and remain silent. Ball was certainly alive when the first bills were filed, and this Court has declared that we are entitled to his defence. If the complainant would not bring him before the Courts to tell his story, when alive, ought we to suffer for the want of that defence, now that he is dead?

45 We crave, then, the favorable ear of the Court when, in order to save ourselves from the responsibility of others, we are compelled to assume a defence of their conduct, so far as we are connected with it.

Whether justly or unjustly it was but natural that those who adhered to the Union should hold to a strict account their agents in the Confederate States during the war, and the Courts, both State and Federal, have rigidly enforced their liability. But while holding these persons to their strict responsibility, we submit to the consideration of this Court,
46 that such persons were often placed in most trying circumstances—circumstances in which a faithful and honest agent might well doubt as to the true interest of his principal. If, on the one hand, the disturbed condition of the country required greater caution on his part, on the other, that very condition of affairs often demanded action which would have

been improper in times of peace. An unforeseen and unexpected emergency had taken place, in which to act was at his peril, and yet he was often compelled to act in order to prevent a greater loss or absolute ruin to his principal. 47

In such a position were the executors of Wm. A. Carson in this case. They had, before the war, sold the plantation in question, as directed by the will, and held the bonds of Ball, the purchaser, for a large portion of the purchase money. The plantation was a rice plantation, the value of which depended in a very great measure upon the institution of slavery. The plantation was situated on Cooper River, in the vicinity of Charleston, and almost within sight of the beleagured city. Mr. Lincoln's proclamation, emancipating negroes in the Confederate lines, had been published, and, upon the fall of the 48 city, the negroes, by which Ball's bonds were secured, would be freed. Not only so, the chief value of the place was on account of the rice mill upon it. But what property so insecure as a mill in the immediate neighborhood of contending armies? And if the property was insecure, the debt for which it was mortgaged was worthless, for Ball paid nobody, as Mr Petigru said (*p. 33.*) However eminent as a lawyer, Mr. Petigru's opinion as to the propriety or impropriety of the conduct of the executors, can, we know, avail the executors only to show what other prudent and interested persons thought proper 49 under the circumstances. But may not the executors cite and rely on it for this purpose?

Under these circumstances Ball, who had not paid his bonds for the credit part of the purchase money, sold the plantation for its full value, and the appellants, with their partners, purchased it. Here let us at once mark the only point at which the appellants have any concern with the conduct of the execution. The questions which the purchasers were called upon to consider, was the authority of Ball to sell and of the executors to release or satisfy the mortgage. 50 What the executors did, or might do, with the purchase money was not their business.

There was no doubt about Ball's authority to sell, and the only consideration was, as to the release of the mortgage. This raises the real question which we shall have to consider upon the merits of the complainants case.

a. Were Alexander Robertson and John F. Blacklock, at the time of the purchase by Hyatt, McBurney & Co., to be regarded as executors or trustees?

51 Mr. Whaley testifies that he persuaded Mr. McBurney to purchase "Dean Hall," the plantation in question, from Ball, (p. 33). Mr. McBurney, of course, had the title examined, and upon the examination it appeared that Ball had purchased from the Executors of Wm. A. Carson. This led to the examination of Carson's will, and it was found that by it, after certain specific bequests, the testator had devised as follows:

"ITEM:—*I order and direct my executors, or such one as may qualify hereon, to sell all the rest of my estate, real and personal, as soon after my decease, and upon such terms, as they or he may deem most judicious.* Untiil such sale takes place, I order and direct my
52 executors to apply so much of the income of my estate to the maintenance and support of my wife and children, and the education of the latter, as they, or he, in their discretion, may deem fit and proper. From the balance of the income, until the sale, *and from the proceeds of sale, I order and direct my debts to be paid*, and then the residue of the purchase money to be divided into three equal parts, and held by my executors, or my qualified executor, in *trust* for the following purposes." etc., etc.

The executors then had full right and power to sell to Ball, for cash or credit, as they might deem most judicious. So far, then, there could be no question as to the title which Ball tendered. But Ball had mortgaged the plantation back to the executors to secure the credit part of the purchase
53 money, and it was necessary, therefore, in order to obtain an unincumbered title, that the executors should release or satisfy this mortgage. Had they power to do so?

The rule in South Carolina is that where an executor has authority to sell, a purchaser is not bound to see to the proper application of the proceeds of sale. *Laurens vs. Lucas, 6 Rich. Eq., at p. 226.* The same rule is held by this Court. *Potter vs. Gardner, 12 Wh., 498.*

The executors, as we have just seen, had power to sell on such terms as they deemed judicious, and having sold on
54 credit, they had authority to receipt in payment of the credit part of the purchase money when paid.

More than a hundred and fifty years ago it was held by Sir Joseph Jekyll, M.R., that where one possessed of a term, devises it to A, and makes B his executor, and leaves some debts, if the executor sells the term the purchaser shall hold

it against the devisee. In *Ewen vs. Corbett; 2 Peere Williams, 148.* We read:

"*Master of the Rolls*—I remember it to have been once ruled that an executor could not make a good title to a term to a purchaser, and that was the case of major *Bill vs. Humble.* But since that I take it to have been resolved, and with good reason, *that an executor, where there are debts, may sell a term.* and the devisee of the term has no other remedy but against the executor, to recover the value thereof, if there be sufficient assets for the payment of debts." 55

In *Court vs. Jeffery, 1 Simons & Stuart, 105,* Sir John Leach, V. C., held that legatees were not necessary parties to a suit because the personal estate might be exhausted by *the debts,* and that their interest was, therefore, uncertain.

In *Forbes vs. Peacock, 11 Simons, 152,* a testator, after directing all his past debts to be paid, gave his personal estate and 56
a freehold house, of which he was seized, in fee to the wife, for life, with liberty to sell. This permission to sell was given in such a way as to raise a doubt as to the executors' power in the matter.

It was urged that supposing that a power to sell is vested by implication in the plaintiff, still as the sale could not be required for the payment of the debts of the testator, who died *twenty-five* years before, the executor could not give a receipt for the purchase money without the concurrence of the *cestui que trust,* that the executor had sold the property with- 57
out their knowledge, and that he did not know who they were or where they resided; that the probability was that some of them at least were alive.

The Vice-Chancellor, Shadwell, held that the executor had the power to sell, and said:

"The only other question is, whether the plaintiff can give a valid receipt for the purchase money, and I am of opinion that he can do so, for the testator has charged his real estate with the payment of his debts, and as the bill says nothing at all about the debts, *non constat,* but that some of them may still remain unpaid. *At all events the purchaser has no notice that they have been all paid, and he is not bound to inquire whether they have been paid or not.*" 58

In the case of *Pierce vs. Scott, 1 Y. & Co. Eq. (Ex.) 257,* a bill for specific performance was held against a purchaser, who objected to the title, because the property was charged with debts. To which it was answered that the lapse of fif-

teen years was strong evidence that the debts were paid. But Lord Abinger, C. B., declared, that though it was not likely that creditors would wait so long, he could not say that
59 it would be a safe or prudent purchase, and dismissed the bill.

In the case of *Stroughill vs. Anstey*, *1 DeG. M. & G.*, at *p. 652*, Lord Chan. St. Leonard says:

"The case then comes to this: if authority is given to sell for the payment of debts and legacies, and the purchaser knows that the debts are paid, is he bound to see to the application of the purchase money? I apprehend not. In the case of *Johnson vs. Kennet*, where it was contended that the rule did not apply, because the debts had been paid before the sale took place, I held that the rule had reference to the death of the testator, and, therefore, that even supposing that the debts were paid before the sale took place, and that the legacies alone remained as a charge that such circum-
60 stance could not stay the general rule. * * The case must stand upon one or two grounds, either that there are no debts within the knowledge of the purchaser, and then it is indifferent whether there were no debts at the death of the testator, nor no debts at the time of the purchase, or, which is more satisfactory and open to no ambiguity, on the ground that when a testator, by his will, charges his estate with debts and legacies, he shows that he means to entrust his trustee with the power of receiving the money, anticipating that there will be debts, and thus providing for the payment of them. It is by implication a declaration by the testator that he intends to entrust the trustee with the receipt and application of the money, and not to throw any obligation at all upon the purchaser or mortgagee; that intention does not cease because there are no debts; it remains just as much if there are no debts as if there are debts, because the power arises from the circumstance that the debts are provided for, there being in
61 the very creation of the trust a clear indication, amounting to a declaration by the testator, that he means, and the nature of the trust shows that he means, that the trustees are alone to receive the money and apply it. In that way all the cases are reconcilable and all stand upon one footing, namely, that if a trust be created for the payment of debts and legacies the purchaser or mortgagee shall in no case be bound to see to the application of the money raised. This would be a consistent rule on which everybody would be able to act, authorized, too, by the words of the testator, and drawing none of those fine distinctions which embarrass Courts and counsel and lead to litigations, and it is one to which I shall adhere as long as I sit in this Court."

In the case of *Charlton vs. Earl of Durham*, *Law Reports*, *4 Chan. App.*, at *p. 438*, (which is a case remarkably similar to
62 this in many particulars,) Lord Hatherly, L. C., says:

"The persons with whom the executors are dealing are not bound to know the state of the testator's assets, and it may be many years before all his debts are paid and his estate wound up There are good reasons why the receipt of one executor should suffice as he may be called upon to pay debts, and this rule, therefore, prevails until you can fix the debtor with much more precise notice than we have here that the estate has been all administered."

In *Lowry vs. Com. & Farmer's Bank, Campbell's Reports*, at *p. 332*, Ch. J. Taney says:

"Undoubtedly this stock, although thus specifically bequeathed, was yet liable to be sold, if necessary, for the payment of the debts of the testator, and if the bank did not know, or had no reasonable ground for supposing that the executor was misapplying the assets, it would not be responsible, notwithstanding its implied knowledge of the will." 63

Mr. Lewin says, p. 393:

"If there be merely a *presumption from length of time that all debts are paid*, it may be argued, indeed, that the executor is a trustee for the next of kin, and that the money cannot be paid safely to any other than the next of kin as the *cestuis que trust*. However, the better opinion probably is that, in the absence of all *mala fides*, the executor's receipt would be sufficient. The late Vice-Chancellor of England appeared on the argument of a case in which the author was counsel, to concur in this view, for he asked, 'If the executor could not sign the receipt, who could?' *In the case alluded to there had been a lapse of thirty-five years from the testator's death, and no allegation of debts.*" 64

Mr. Perry, in his work, commenting on the case of *Stroughill vs. Anstey*, says, § 797:

"This rule thus stated proceeds upon the ground that in all cases where a testator has given his trustees a power of sale to pay debts generally, or to pay particular debts, or to pay legacies only, he has reposed a special confidence in the trustees for those purposes, and has declared that they shall execute the trusts and that purchasers have nothing to do with its execution, and need not look to the application of the purchase money, whether it is to pay debts generally, or debts and legacies, or particular debts named, or legacies only."

b. But if, then, Robertson and Blacklock are to be regarded as executors, with power to receipt for and to discharge the debts of the estate of Wm. A. Carson, could one of them alone do so? 65

The general rule undoubtedly is, that co-executors, however numerous, are regarded in law as one individual person, and by consequence the acts of any one of them, in respect of the administration of the effects, are deemed to be the acts of all, for they have all the joint and entire authority over the whole property. Hence, a release of a debt by one of several executors is valid and shall bind the rest. So a grant or a surrender of the term by the executor shall be equally available. So the attornment of one shall be the attornment of the other." *See authorities there cited. 2d Williams on Executors, 310.* 66

In the case of *Simpson vs. Gutteridge, 1 Madox Chan. 616, Am. Ed. 327, at p. 330, 331*, the fourth exception to the Master's Report was:

" Because the title to a term of one thousand years, created by an indenture, dated the 17th day of July, 1817, and stated to have been assigned to *Thomas Barnes* and *Isaac Hindly*, by an indenture, dated 6th February, 1779, upon trust to attend the inheritance, is not satisfactorily deduced, the last mentioned indenture purporting to be
67 an assignment of the said term by *Walter Shirley* and John Lloyd, the executors of Lady Francis Shirley, then deceased; whereas the said Walter did not execute the said indenture."

The Vice-Chancellor, Sir Thomas Plumer, as to this exception observed:

" That where one of several joint-tenants, or tenants in common, executes a deed, it passes only the share of the party so executing, but several executors are considered only as one, and a gift surrender payment, release, or judgment conferred by one executor, is as effectual as if all of them had joined. In the *Dyer*, it is said if two executors have a term, and one grants to a stranger all that belongs to him, his whole term passes, inasmuch as each of them, has an entire authority and interest in his term as
68 executor. But of other joint-tenants of a term it is otherwise. So there is diversity. This doctrine has been constantly recognized each executor has an entire interest in this term. If any thing pass by the deed, it must have been the entirety of the term. The executor not being entitled in moiety or parts, what then is the effect of one executor only executing the deed? If one only executes it must be considered as his deed only, but the question what passes, must depend upon the words of the deed; upon what purports to convey. This deed purports to convey the entirety of the term, and therefore that passes. In *Touchstone* it is said, if there be divers grantors, obligors, &c., named in a deed and one of them only do seal this deed, there is a good as against him that doth seal, and void as to all the rest that do not seal. And if divers enter into covenants by a deed severally, and the seal of one of them is broken from the deed, in this case the deed is good still as to all the rest, but void to him " Here each assignor had the entire interest, and being a good deed by Lloyd, it passed the entire
69 term.

In the case of *Bogert vs. Hertell*, 4 Hill 404, Chief Justice Nelson says:

" The great question in the case is, whether the assignment of the bond and mortgage by Van Buren to Bogert had the effect to transfer the legal interest thereon, or in other words, whether one of the executors was competent to sell and transfer this item of the assets of the estate so as to give a complete title to the purchaser. The Court below held, that notwithstanding the power given to sell and dispose of the real estate, and then in fact to convert the mass into money, yet after it had been converted and existed in the hands of the executors in the state and condition of personalty, it was still to be regarded as land, subject to the rules and principles guiding the disposition of
70 real estate, and that the executor as such having no control over the lands, (the power being limited strictly to the administrator of the personal estate,) the sale and assignment by Van Buren were wholly inoperative and void. The Court below also held that even admitting the bond and mortgage to be a part of the personal assets of the estate, yet, inasmuch as these instruments were made to Van Buren and Whyckoff in their joint names though described as executors, it was not competent for one of them to sell and transfer the legal title to the same "

"In respect to the first ground, I think the fundamental error lies in a misapprehension of the true nature and character of the fund in the hands of the executors. It is said by the Court below, to be an established rule in the doctrine of equitable conversion of real into personal estate, that where the devisor directs the conversion for a particular specified purpose and not absolutely for all intents and purposes, or "out and out" as the phrase is, Courts are bound still to regard the estate as land, and that no part of the mass thus converted has impressed upon it the character of personalty; but I think the authorities demonstrate that where the devisor has directed or authorized the converson of his real estate even for a particular special purpose, such as distribution, Courts are bound so long as the purpose and object exist, and continue to regard it as of that species of property into which it was directed to be converted; and to the extent and for the purpose declared it is to be treated as money and not land. This will be found to be the uniform language of all the cases on the subject" 71

And after a full review of all the cases, the late distinguished jurist concludes, (p. 507):

"Assuming that Van Buren, the executor, was competent to sell and assign the bond and mortgage, then there cannot be a doubt that Bogert acquired a complete title to the money due thereon, for it is admitted that he purchased, in good faith, and for full value advanced at the time. There is no pretence for the charge of collusion with the executor, or of knowledge on the part of Bogert that the executor intended to misapply the assets, or of fraud of any description. He paid the full face of the bond in cash on a purchase in the usual way and upon all the cases, assuming that one of the executors alone had power to assign and transfer the interest in the securities Bogert has established as perfect a right to the money thereby secured, as if Van Buren had been owner in his own right." 72

The case of *Charlton vs. Earl of Durham*, above quoted, is identical with this case in all its essential particulars. The differences are entirely in our favor. Let us compare them. 73

Charlton vs. Durham.

"A testator gave the residue of his estate to his executors upon certain trust. Part of his estate consisted of a bond given by the trustees of a minor who came of age within a year after the death of the testator, and the executors then accepted his bond to them, jointly, in the place of the bond given by the trustees.

Ten years afterwards a part of the money was paid by the obligor to one of the obligees, who embezzled the money so paid, and gave a receipt purporting to be signed by both obligees, but in fact signed by one only, the signature of the other being a forgery."

Carson vs. Robertson.

W. A. C., directed his executors to sell the residue of his estate as soon after his decease as they should deem judicious, and divide residue of proceeds, after payment of debts, into three parts, to be held by his executors upon certain trusts. The executors sold, and held as part of proceeds certain bonds of E. N. B, secured by a mortgege of the plantation, *Dean Hall.*

Seven years afterwards one of the executors received payment of these bonds, and gave a receipt therefor upon the bonds. 74

The Lord Chancellor, Lord Hatherly, held in the case of *Charlton vs. Durham*, that though the obligor intended to have the receipt of both obligees, the receipt of one was
75 sufficient to discharge the obligors, as the obligees were executors.

This case so similar to ours in its circumstances, fully sustains in its rulings our position, and at once answers the argument of the appellee that the executors holding under a trust, were therefore technical trustees and not executors.

c. As to the consideration.

But, says the complainant, granting that Robertson and Blacklock were still to be regarded as executors, and that
76 one of them could receipt for the debts due the estate, they paid but Confederate currency, which was not a lawful payment.

By the memorandum of agreement entered into by Counsel, (p. 101), it appears, that to pay the purchase money of the plantation, Dean Hall, the appellants sold a large amount of cotton, to wit: six hundred bales, the proceeds of which were deposited, with their other money, in the South Carolina Bank, and their checks were drawn against the same. By Mr. Johnson's testimony, (p. 31) the complainant shows, that the
77 check for $84,207.56 was paid by a credit to Robertson and Blacklock on the same day.

It will be observed, that in point of fact no Confederate currency passed between the appellant and Ball. They gave their checks to Ball for the purchase money—one of these checks for $84,207.56, and the other for $16,000. The first was deposited by Robertson and Blacklock to their credit in the same Bank. Now, suppose that Robertson and Blacklock had left their money on deposit in Bank. They would then have had a credit at the end of the war in that Bank to
78 the amount of the value of the Confederate currency reduced to the value of United States currency as of the date of the deposit, *Whaley v. Bank of Charleston, 5 Rich. N. S., 189*, and by the rule of computation, adopted in *Mayer v. Mordecai, 1 Rich. N. S., 383*, the $100,000 estimated in Confederate currency at the time of this transaction was worth $33,333.33.

We will recur to the question of values directly, but for the present our point is, that we paid in checks on a bank which checks need not necessarily have been converted into Confederate currency, still less invested in Confederate bonds. 79

When these proceedings were first commenced, it was supposed that the Court would refuse to recognize or to sanction any transaction whatever which had been based on Confederate currency, but in the cases of *Thorington v. Smith, 8 Wallace, p. 1; Delmas v. Insurance Co., 14 Wallace 661*, and *Planter's Bank v. Union Bank, 16 Wallace, 483*, the Court refused to set aside contracts made upon such a consideration.

The case of *Thorington vs. Smith* is decisive upon the question of valuable consideration. This Court in that case enforced a contract made upon the consideration of Confede- 80
rate treasury notes, and required the payment of their estimated value in United States currency; and in the case of *Dean Yonnell's administrator*, reported in a note to *Thorington vs. Smith*, held, that upon the same principle, the fact that the land was sold for Confederate notes did not, in the absence of all averment that the complainant was induced to take them by fraudulent misrepresentation (of the decedent) afford ground for the interposition of a Court of Equity.

In the case of *Delmas vs. Insurance Company*, the Court went further and held, that the notes of the Confederate 81
States in ordinary use as money, during the rebellion, might constitute a valid consideration for a contract, and that a provision in the Constitution of a State subsequently adopted, declaring such contracts void, was an impairing of the obligation of such contract within the meaning of such Constitution.

In *Planters' Bank v. Union Bank*, it was held that a promise to pay in Confederate notes in consideration of the receipts of such notes, and of drafts payable by them is neither a *nudum pactum* nor an illegal contract; and that though an illegal 82
contract will not be enforced by courts, yet it is the doctrine of this court that where such a contract has been executed by the parties themselves, and an illegal object has been accomplished, the money or thing which was the price of it may be a legal consideration between the parties for a prom-

ise express or implied, and that the court will not unravel the transaction to discover its origin.

If the court unravel the transaction in regard to the pur-
83 chase of "Dean Hall"—it will soon appear, instead of the conspiracy charged, to have been a simple business transaction in which Hyatt, McBurney & Co., through the medium of bank checks then payable in Confederate currency, changed an investment in a large amount of cotton to an investment in real estate.

But if it were, the State of South Carolina so far from declaring contracts based upon Confederate currency illegal has by act of the General Assembly of 1869, definitely estab-
84 lished the fact that the purchasers in this case paid full value for the plantation.

In the revised Statutes S. C. Chap. LV, p. 310, it is enacted:

"Section 1. That the value of all debts and obligations whether under seal or not under seal created or contracted in Confederate States notes as a basis of value issued by the so-called Confederate Government or on, or by any bills, bonds or notes assimilated or made equivalent in value to Confederate States notes by any law or custom of trade shall be determined by the value of the said Confederate States notes in the lawful money of the United States at the time such debts or obligations were created or contracted.

85 "Section 2. That the value of one dollar of lawful money of the United States in said Confederate States notes is declared as follows:

"1. During January and February, 1861, one dollar of lawful money was equal to & ct & ct

* * * * * *

"26 On the first day of April, 1863, one dollar of lawful money was equal to three dollars and fifty cents of Confederate States notes, and from day to day thereafter regularly increased in value until the thirtieth day of April, 1863, when one dollar of lawful money was equal to three dollars and eighty cents of Confederate States notes."

The contract it will be recollected was made some time in March, and completed, and the money paid on the 23d of
86 April, 1863, taking therefore, the basis established by the legislature of South Carolina, at $3.50, for the 1st of April, and $3.80, for 30th, we will put the value of one dollar in U. S. currency on the 23d April at $3.75, in Confederate currency. The decree fixes that the sum of $31,000 is due as principal on the bonds secured by mortgage of "Dean

Hall," with interest from the 23d April, 1863. Thirty-one thousand dollars in U. S. currency was worth as established by the act just cited at $3.75 to one—$116,250. The purchasers then actually paid at the least the equivalent of $26,666, in U. S. currency at the time, out of an amount due on the bonds fixed by decree, at $31,000, leaving a difference of only $4,334, in U. S. currency between the amount due on the bonds secured by the mortgage and that actually paid —a difference fully accounted for by the difference in value of the place in a time of prosperity and in a time of adversity. He who asks equity must do equity. The executors received from the purchasers the equivalent of $26,666 in lawful money, and for that conveyed to them the plantation. If the complainant is dissatisfied with the bargain they made it is easily remedied; the purchasers will gladly restore the land for the value they gave for it, aye! for the half of it. As is well know, if the lands were sold to-day they would not bring a third of the sum.

87

88

But in the case of *Mayer v. Mordecai*, quoted below, the Supreme Court of South Carolina has assumed the value of Confederate notes as of that time as compared with United States currency at *three* to one, which would make the sum paid by the purchasers, $33,333.33 against $31,000 now found due upon the bond as of that date; by which, the purchasers actually paid to Ball more than was due upon his bond to the executors.

89

The language of Mr. Justice Field, in *the Confederate Note Case, 19 Wall, 555*, is most appropriate to our position:

"The treasury notes of the Confederate Government were issued early in the war, and though never made a legal tender, they soon to a large extent took the place of coin in the insurgent States. Within a short period they became the principal currency in which business in its multiplied forms was then transacted. The simplest purchase of food in the market, as well as the largest dealings of merchants were generally made in this currency. Contracts thus made not designed to aid the insurrectionary government, could not, therefore, without manifest injustice to the parties, be treated as invalid between them Hence in *Thorington vs Smith*, the Court enforced a contract payable in these notes, treating them as a currency imposed upon the community by a government of irresistible force. As said in a later case referring to this decision, "It would have been a cruel and oppressive judgment if all the transactions of the many millions of people composing the inhabitants of the insurrectionary States for the several years

90

of the war, had been held tainted with illegality because of the use of this forced currency when those transactions were not made with reference to the insurrectionary government." *Hanauer vs Woodruff*, 15 *Wall*, 448.

91 Subsequent to these cases, two others have been decided upon which the complainant greatly relies. *Horn vs. Lockhart, 17 Wall, 570, and Fretz vs. Stover, 22 Wall, 198.* In the first this Court refused to sustain the decree of a State Court, which during the war had sanctioned an investment by an executor in Confederate bonds, and in the other it refused to release a mortgage claimed to have been paid in Confederate currency. These decisions might be applicable to the liability of Robertson and Blacklock, if the complainants had them before the Court; answering and admitting that they
92 had drawn in Confederate currency the checks which the appellees had given Ball, and had invested the proceeds in Confederate bonds. But in the present pleadings they have made no answer, and the Court is left to conjecture upon a matter in which we are entitled to their defense. Nor is their any evidence, which can be relied on as against the appellants to show that such was the fact. Upon this point the evidence completely fails, as to the appellants. But if it had been proved, so as to conclude the appellants, that Robertson and Blacklock had drawn the checks in question in Confede-
93 rate currency, and invested in Confederate bonds, the Court is asked to go a step further than *Horn vs. Lockhart*, and *Fretz vs. Stover.* It is asked to say that it would hold the purchasers from Lockhart responsible for paying him in currency he was willing to receive. It is asked to say that if Stover had sold the farm covered by the mortgage to Fretz, had produced Chilton's power of attorney from Fretz to receive payment, and Chilton's receipt and discharge as such of the mortgage, as such attorney in fact, that this Court would not only have held Stover still liable on his bond, but
94 would have also held the farm on the hands of the purchaser still subject to the mortgage so satisfied by Fretz's attorney. We do not think that this Court is prepared to go to this extent.

The distinction which we take has been declared as law in South Carolina, by a Court by no means indulgent to Con-

federate investments. The case of *Mayer v. Mordecai, So. Ca. Rep., N. S.* 1 *Rich.* 383. The facts are thus stated in the head-note :

"By deed in May, 1860, three bonds, secured by mortgages of real estate, were 95
assigned to B in trust to invest the proceeds, as soon as received, in such manner as the said B may think proper, on consultation with the *cestui qui trust*, and then permit them to receive the income. The *cestui qui trust* removed, shortly afterwards, from South Carolina, where the trust was created, to New York, and remained there during the war with the Confedirate States. In 1863 and 1864 B collected the bonds in Confederate Treasury notes, then much depreciated, and invested the proceeds in bonds of the Confederate States without consultation with the *cestui qui trust*, with whom it was, at the time, impracticable to communicate."

Held—"That B committed a breach of trust in receiving payment of the bonds in Confederate Treasury notes, and investing the proceeds in bonds of the Confederate 96
States, and that he was to account to the *cestui qui trust* for the sums received."

Held further—"That the obligors in the bonds were not liable to account to the *cestui qui trust*, for they were discharged by the payment to B."

Moses, C. J., in delivering the opinion of the Court, says :

"Although the trustee is not discharged from liability to account for the three bonds, yet the mortgage, as against the original debtors, cannot be set up as of force. The legal title to the bonds was in him, and with the investment of the proceeds they had no concern, if, according to the rule in this State, a vendee is not bound to see to the application of the purchase money (1 *Lining v. Peyson*, 2 *De S.*; *Laurens v. Lucas*, 1 Rich., Eq 226,) or a mortgagee under the order of the Court, that the money is appropriated to the purposes for which the mortgage was taken. (*Spencer v. Bank of State.*) Bail. Eq. 468; much less can a debtor, who makes satisfaction to the 97
creditor in a manner acceptable and agreed to by him in the form of actual payment to be held to such requisition."

d. Bill alleges assignment by her sons to complainant under their father's will shortly before suit commenced, but it does not state any consideration, and no consideration was in fact paid.

1. *Fonblanque Equity*, 349.

"But regularly, equity is remedial only to those who come in upon an actual consideration; so that, although a voluntary conveyance which is good in law, is sufficient likewise in equity; yet a voluntary defective conveyance which cannot operate in law, is not helped here in favor of a bare volunteer, where there is no consideration 98
expressed or implied"

In the case of *Jefferys v. Jefferys, Eng. Chan.* 19, 1 *Craig and Phillips, 141.*

The Lord Chancellor, with respect to the copy, held :

"I have no doubt that the court will not execute a voluntary contract, and my impression is that the principle of this Court to withhold its assistance from a volunteer applies equally, whether he seeks to have the benefit of a contract, a covenant, or a settlement."

In Sewell v. Moxly, 42 Eng. Chan. Rep., 2 Sims, 191, the Vice Chancellor, after stating the facts, says:

99 "The question is, whether the debt is due to the plaintiff for to entitle her to sue she must be a creditor of Stallwood? She says she is a creditor by virtue of the assignment made to her by Sanders. But an assignment of a chose in action does not convey any legal right. In the view of a court of equity it operates only as an agreement, and if it is voluntary the court will not enforce it at the suit of the assignee against the assignor. Now the assignment under which the plaintiff claims to be a creditor of Stallwood was voluntary, and consequently the plaintiff could not enforce it against Mr. Sanders, the assignor. And this being so, I cannot decide that she is a creditor of Stallwood, or entitled to sue as such. Therefore the claim filed by her must be dismissed with costs.

Lord Abinger, in *Frosser v. Edmonds*, 1 Y. & C., p. 497, says:

100 "In the present case it is impossible that the assignee can obtain any benefit from his security except through the medium of the court. He purchased nothing but a hostile right to bring parties into a court of equity as defendants to a bill filed for the purpose of obtaining the fruits of his purchase.

* * * * * *

"What is this but the purchase of a mere right to recover? It is a rule not only of our own law, but of that of all countries, that the mere right of purchase shall not give a man a right to legal remedies. The contrary is no where tolerated, as it is against good policy.

"All our cases of maintenance are founded on the principle that no encouragement should be given to litigation by the introduction of parties to enforce those rights which others are not disposed to enforce."

101 *Hill v. Boyle L. R., 4 Eq., 260.*

And by this court. *Propeller Mohawk, 8 Wall, 162; Marsh v. Whitmore, 21 Wall, 184.*

The principle that equity will not be remedial or assistant to mere volunteers, is recognized by the courts of South Carolina in their earliest decisions. *Maine v. Dickinson*, 2 *DeS.* Chan. Rep., 191, and *Jacks v. Turner*, 3 *DeS.* Chan. Rep., 1; and by the courts of New York in *Bunn v. Winthrop*, 1 *Johnson Chan.*, 336.

There can be no assignment of a bare right to call a trustee 102 to account for fraud or breach of trust. The cestui trust alone can assert the claim and no more assign it than he could a *case* at law. (*Story Eq. Ins.*, § 1040, *h.*)

EDWARD McCRADY, JR.

SUPREME COURT OF THE UNITED STATES.

No. 780.

WILLIAM McBURNEY AND THOMAS R. McGAHAN

vs.

CAROLINE CARSON.

BRIEF OF MR. EDWARD McCRADY, FOR APPELLANTS, IN REPLY TO MESSRS. EDWARD M. SHEPARD AND CLARENCE A SEWARD.

Mr. McCrady's reply to Mr. Lowndes was printed before he was aware that Messrs. Shepard and Seward were of counsel in this cause, and before he had received a copy of their argument.

CORRECTION OF ERRORS IN THEIR FACTS.

Messrs. Shepard and Seward, not having been of counsel during the progress of this cause, have unconsciously made several mistakes in their brief.

1. At p. 3, paragraph commencing "The trust accounts of Robertson and Blacklock." There was no account ever filed by Blacklock as *trustee*. Nor were trust accounts filed *from time to time*, as stated. No such accounts were ever filed until long after the transactions in question, to wit, 6th July, 1866, immediately before the filing of the first bill, 11th August, 1866, and then all together, by Robertson alone, and on their face show that they were made up long after the matters to which they relate, and appear to be made up in the interests of complainant. The annual accounts of Robertson and Blacklock, as *executors*, were regularly filed up to 1861. See Trans. Rec., pp. 46 to 63.

2. At p. 4, of Brief, paragraph commencing, "McBurney

so acting for his firm," there is neither proof nor admission of what is stated in this paragraph. The statements of both McBurney and McGahan in their answers are, that Ball was paid more than $80,000 of Confederate currency to pay off the mortgage on Dean Hall. How Ball settled with Robertson is not stated.

Blacklock had been absent nearly two years. See his answer, p. 18, Trans. Rec.; and therefore could take no part in the transaction.

3. At p. 6 of Brief, paragraph commencing, "The mortgage was not formally satisfied."

There was no testimony upon what is alleged in this paragraph, and no admission of the allegation by either of the appellants, and the complainant was bound to prove the facts, *if she could*, and they were important to her case. Young *vs.* Grundy, 6 Cranch 51. Blacklock says, in his answer, he had nothing to do with the transactions in respect to the testator's estate from the 10th May, 1861, when he went away, and that he never returned until 23d October, 1867. See his answer, p. 18, Trans. Rec.

4. At same page 6 of Brief, paragraph commencing, "Elias N. Ball, the obligor in the bonds."

This is certainly a most extraordinary representation of McBurney's answer. His answer simply sets out these statements, *as made in the amended bill, which, if true*, he insists could not be alleged in an amended bill, because they were all, *as alleged*, occurrences after the filing of the original bill, and therefore must be set forth in a supplemental bill, and on that ground demurred to the amended bill, and his demurrer was sustained. He never had the opportunity to take issue with complainant on these statements, and so far from admitting, never answered them, but demurred to them, and his demurrer, after full argument, was sustained by the Circuit Court.

5. Same page of Brief, next paragraph, commencing "The bill also charged, without contradiction."

The charge was not answered, and no exception was taken to the answer on that account, and it was therefore to be proved by complainant, if important to her case, but no proof

was offered as to the insolvency, and could not have been proved as to both of them; and that they *never accounted* is utterly disproved by the record, pp. 46 to 63.

6. Same page of Brief, next paragraph, commencing: "The Confederate notes in their hands were worthless."

This was certainly not so. These Confederate notes, according to the estimation of our Supreme Court in Meyer *vs.* Mordecai, (1 So. Ca. Report, at 397,) were worth in United States currency (by which, according to Bissell *vs.* Heyward, 96 U. S. Rep. 530, this Court held they were to be scaled) as much perhaps as was due upon the mortgage, and could have purchased more of that currency, at that time, than any one would have been willing to give for the mortgage debt and security.

THE RECORD.

It is said, p. 8 of Brief: "The Record shows no demurrer, objection or exception to either the amended or supplemental bill." This surely must be an inadvertence. At p. 76, Trans. Rec., the whole of the first paragraph on that page is devoted to setting forth the grounds for demurrer to the *amended* bill, and then submits "that the complainant cannot, by way of amendment, introduce any matters or transactions which have taken place subsequently to the filing of the original bill, and insists upon the same advantage with respect to this objection as if he had demurred thereto." And upon this demurrer, according to the practice of the Court of Equity, the case was first heard and, after argument, the demurrer was sustained as to the supplemental bill. Neither appellant was made a party to it or had any notice of it in any way until the motion was made to dismiss the amended bill for want of prosecution. To that therefore they never had a chance to plead, answer or demur.

The statements in the last paragraph of this page are fully corrected in the terms of agreement upon which this cause has been submitted to this Court, and a copy of which is as follows:

In submitting this case under the 20th Rule, it is stipulated and agreed:

1. That for the purposes of this appeal, the question as to the citizenship of Mrs. Carson, the complainant made in the answer of the appellant McGahan (See page 80,

Transcript Record) is hereby waived, and this appeal is to be considered as if her alleged citizenship had been established.

2. That it is admitted that the demurrer contained in the answer of the appellant McBurney (See page 76, Transcript Record) was formally argued before the Circuit Court, Judge Bond presiding, on the 3d February, 1876, and that the said demurrer was sustained by the said Court on the ground stated therein, to wit: That the complainant cannot, by way of amendment, introduce any matters or transactions which have taken place subsequently to the filing of the original bill, and that, thereupon, leave was granted to the complainant to file a supplemental bill to bring in the assignee of Ball, whose bankruptcy and death, as alleged by the complainants' amended bill, had taken place subsequently to the filing of her original bill.

3. That it is admitted that the facts recited in the order proposed on 2d February, 1877, by the appellants, which order the Court refused to sign, but ordered to be filed (See Transcript Record), are correct and true in fact, and that the appellants did then and there move to dismiss the said amended bill for want of prosecution as to them, they not having been served with process upon the supplemental bill, nor made parties thereto, nor notified thereof.

MATTERS OF PLEADINGS AND PRACTICE.

It is not perceived that much has been said upon the pleadings, that has not been met in the opening argument and the reply to Mr. Loundes, and this reply shall be brief.

I. Numerous cases are cited and discussed as to the circumstances excusing the making of parties, but not one of them meets the circumstances and conditions of this case. These appellants did not desire Ball to be made a party for his benefit, or for that of the complainant, but entirely for *their own.* This Court has said he was an indispensable party, emphatically, because appellants were entitled to his aid. "His defence is their defence." Can any case be produced to support the position that such a one need not be made a party? *Now*, in order to excuse the ommission in the original bill, and to supply the defect, it is said that Ball afterwards became a bankrupt, that Miller is his assignee, and that Ball is dead. These allegations in the amended bill were the grounds of McBurney's demurrer to that bill, and the demurrer was sustained; and, therefore, there was neither issue nor proof, upon that bill, of any of these allegations against him. McGahan did not admit these allegations in his answer, and there was no exception to his answer. He could not demur, as McBurney did, because he was not made a party to the original bill, and, as to *him*, the amended bill was an original bill.

Then, what is called a supplementary bill was filed, repeating these allegations, but no subpœna was served upon, or notice given to, either of these appellants, so that they never have had a chance to plead, answer or demur to that supplemental bill, or to make any issue upon it in law or in fact; and, up to this time, as to these appellants, there is not a tittle of testimony in the cause to support a single one of these allegations. A *pro confesso* was taken against Miller, and, thereupon, these appellants, without being parties to this supplemental bill, or having had a chance to controvert its statements, were obliged to try the cause upon the amended bill, to which they had demurred, and their demurrer had been sustained. And this is now assigned as error by these appellants.

To say, without any proof whatever to affect these appellants, that Ball was bankrupt and is dead, and that Miller is his assignee, and assume all this as the basis of the argument, that all proper parties have been made, shows that these facts must be important to sustain the argument, and until these facts have been proved there is no foundation *for* the argument.

This Court has been hitherto exceedingly careful to preserve the equity pleadings and practice, as the only means of preserving its equity jurisdiction; and have unceasingly watched and defeated the efforts made in this and so many other cases to allow them to be corrupted by the codes of practice adopted in the different States; and even the practice Act of 1872 has shown the legislative will to except those pleadings, and that practice from any intrusions of the provisions of these codes.

II. As to the applicability of the Practice Act of 1872 to this case, reference is here made to what was said on this subject in the reply to Mr. Lowndes, p. 4 and 5, and very little shall be added.

It may appear to learned counsel in their zeal the height of absurdity in appellants to urge their objection to the application of this Practice Act to this cause, even when they cannot but admit that this Court on the former trial did say that this Act of 1872 could not help the jurisdictional pro-

ceedings had in this action long before that year. Brief, p. 19. Yet it is precisely because this Act if so applied would give *jurisdiction* to the Court in a case where, when the bill was answered, the question of jurisdiction was made, and then must have been decided in favor of the defendant, McBurney, who made it; that there can be nothing but good judgment and sound common sense in refusing to apply this Act to this case. It is not a question of modeling proceedings in progress, but applying and allowing an Act to be construed retro-actively to confer *jurisdiction* where there was none, and the issue upon the very point was made and pending. Is not this, as Ch. Kent says, in violation of fundamental principles? Ball, Hasseltine and Gillespie were out of the jurisdiction of the Court. Two of these, Ball and Gillespie, were held to be indispensable parties. Neither of them could have been then subjected to the jurisdiction of the Circuit Court of South Carolina and made parties, and the Court could not have proceeded. Five years *after*, this Act is passed, and it is proposed to apply it retro-actively to give jurisdiction.

That the supplemental bill (as it is called) was a proceeding *after*, not *before*, the enactment of the Practice Act, only requires these three remarks:

1. There is, in fact, no true supplemental bill, as the bill so entitled has none of the essential characteristics of such a bill. See argument of E. McCrady, Jr., pp. 4, 5, 6, and 7.

2. If it be a true supplemental bill, then it is grafted into and becomes an essential part and continuation of the original bill (see Story's Eq. Pl., S. S. 20. 332), and must stand or fall by the conditions existing at the filing of that original bill, as to the jurisdiction.

3. If this supplemental bill be a proceeding entitled to be considered as independent of the original bill, so as to be a proceeding separable from the original bill, as they have assumed, then these appellants have never been made parties to it, have nothing to do with it, and it cannot affect their position or rights before this Court.

UPON THE MERITS.

These points shall be noticed:

1st. That Robertson was a trustee and Blacklock his co-trustee, and that he acted alone in the transaction without the joinder of Blacklock.

2d. That the appellants knew what kind of money Robertson received and this without more was complicity with Robertson in a breach of trust.

3d. That the assignments of William and James Carson are effectual transfers of their respective rights to sue appellants for the trustee's breach of trust.

As to first point, referring to pp. 6, 7 and 8 of the reply to Mr. Lowndes, these further observations may be made. Ball's bouds and mortgage were made to Robertson and Blacklock as *executors* and not *trustees*. They were executors directed to sell to pay debts, and there is no evidence in the accounts filed by them, even in 1866 that they had ceased to be executors, and were only trustees, prior to the transaction, the subject of this suit.

On the contrary,

a. The account on p. 56, Trans. Rec., headed "William and James P. Carson, minors, in account with A. Robertson, executor of Wm. A. Carson and trustee," proves conclusively that in 1863 and 1864, the shares of these two minors had not been separated and set apart from each other, and that during those years, there could have been no separate account with either of them, for his particular bonds.

b. That although in the account at p. 60, headed "William Carson, a minor, in account with Alexander Robertson, *trustee*," there is an entry under date of November 1st, 1862, on the credit side—under that same date are also entered two other items subsequent to that date; and how long after the last item was received does not appear. And the balance credited at that date is not taken from any separate trust account, but from the balance sheet, as is said of Blacklock and Robertson, in whose books it is not possible to suppose that there was at that time any separate account with Robertson only *as trustee*.

c. The same observation is applicable to the account at pp. 61 and 62, Trans. Rec., headed "James P. Carson, a minor, in account with Alexander Robertson, Trustee." Both these accounts are plainly made up in the interest of the complainant just before the filing of the original bill, which probably was already prepared. The complainant produces them, and therefore would seem to acknowledge that, in 1862, Robertson was *sole trustee*, if trustee at all; as we contend that he was not.

As to the second point. No question is made as to the principles of the cases cited, but only to their applicability to the circumstances of this case. What distinguishes this case from all of them is that the appellants were neither debtors nor trustees, but dealing in perfect openness, fairness, and good faith, in a purchase from Ball of a plantation which was mortgaged.

Here, instead of the connivance of a faithless attorney with the debtor, as in Fritz *vs.* Stover, the father of the complainant, the most eminent member of the South Carolina bar, was consulted, and advised the settlement, which was made by Robertson, who had been the friend of the testator, and of the complainant herself.

These appellants had nothing whatever to do with the investment of the money, and this case does not come within the case of Horn *vs.* Lockhart. Nor were they trustees, using trust funds, as in Mitchell *vs.* Moore.

As to the third point. Nothing shall be said more than has been said in the reply to Mr. Lowndes, except that the danger of such an introduction of possible speculative litigation into equity is greatly to be feared. Admit the possible transfer of a right to sue in equity for a breach of trust, and the ingenuity of men will soon find means to speculate in equity suits.

These assignments were not proved, but are distinctly admitted on this appeal.

EDWARD McCRADY.

SUPREME COURT OF THE UNITED STATES.

No. 780.

WILLIAM McBURNEY AND THOMAS R. McGAHAN,

vs.

CAROLINE CARSON.

BRIEF OF MR. EDWARD McCRADY, FOR APPELLANTS, IN REPLY TO MR. JAMES LOWNDES.

As to the Pleadings.

1. Mr Lowndes' first position, is, that the complainants' amended bill, served on the defendants (appellants here) 13th June, 1874, (Trans. pp. 68 and 71) is good as a supplemental bill. This is a bold effort to save his case by confounding the distinction between amended and supplemental bills, which, if successful, might lead to the obliteration of all distinctions in the nature of bill in equity, and at last to the destruction of all essential characteristics of equity pleading. For that this was recognized and treated as an amended bill, as distinguished from a supplemental bill, by the counsel on both sides, and by the Judge who heard the cause on circuit, is beyond all question.

The motion of complainants' counsel before the filing of that bill, was for leave "to withdraw complainants' replication, and to amend her bill by filing in its stead an amended bill (Trans. p. 66). Mr. Lowndes' affidavit in support of this motion, (same p. 66) calls it an amended bill;" and the order on that motion (Trans.

p. 67) was that "complainant have leave on the payment of costs, to withdraw her replication and to amend her bill or file an amended bill as the case may require." When a copy of this bill was served upon appellants' counsel, their acknowledgment of service (Trans. p. 71) was, "of a copy of this amended bill." Afterwards, on 13th August, inst., (Trans. p. 77) complainant, by her solicitors, moved for and obtained leave of the Court, to amend her *amended bill* last filed." This bill was demurred to by appellant as *an amended bill*, on the ground that Ball's assignee, Miller, could not be made a party "by any amendments to the original bill, nor even by bill of Revivor, but only by a supplemental bill" (Trans. p. 76). And upon the hearing of the cause upon this demurrer, the Court decided that it was necessary in this cause to make the assignee, Elias N. Ball, bankrupt, party to this cause * * * * by *supplemental bill*" (Trans. p. 95), and thereupon complainants' counsel entered an order reciting the fact that the Court had so ruled. At a still later stage, (p 77) 13th August, 1874, complainants' counsel took an order "to amend her *amended bill.* Throughout the whole proceedings, therefore, this bill has been recognized and admitted by complainants' counsel, and ruled upon by the Judge of the Circuit as an amended and not a supplemental bill, without a question raised upon that point, and it is too late to do so now and here.

Nor was it possible below or here to consider it as a supplemental bill, for it was not so styled, nor did it have a single characteristic of a supplemental bill. It alludes to no previous bill to which it could be supplemental, but is, to all intents and purposes, simply an original bill amended, and not a supplemental bill. See the opening argument of Edward McCrady, Jr., p. 4. b. et seq., for authorities.

2. Mr. Lowndes next maintains that it was not necessary that a supplemental bill should be brought against any one except Miller, the assignee of Ball, and the bill on p. 96 was a good supplemental bill, although

the other defendants, these appellants, were not parties to it. 7

Nothing more can be said on this point than has been said in the opening argument of Mr. McCrady, Jr., (at p. 6,) to show that where the parties to be made, are made for the interest of the original defendants, there all the original defendants must be made parties to the supplemental bill, and be served with subpœnas. The appellants in insisting upon their rights to be made parties to the supplemental bill, are in pursuit of their own interest. That they were directly interested in Ball being made a party, has been considered and decided 8 in this cause already, (19 Wall, 95 at p. 105.) This Court has said "that Ball's vendees," (these defendants and appellants) "are entitled to his aid. His defense is their defense." Whether the complainant wanted a decree against Ball, or his representatives or not, is of no consequence. The question is whether she could get the same decree, or any decree against these appellants, if Ball had been made a party defendant with these appellants. These appellants have never had the opportunity of taking issue with complainants upon any 9 of the allegations of her supplemental bill, and there never has been any proof made to affect them, that Ball was ever bankrupt, that he is dead, or that Miller represents him in any way. All this is made to rest on a *pro confesso* against Miller, who was out of the jurisdiction of the Court, and, appellants believe, could not be made a party.

3. Then it is said, "if there is error in the proceedings below, it has operated no injury to the appellants. This is a pure assumption against the whole theory and 10 system of equity, jurisdiction, pleading and practice. Who can say that the original defendants could not have been benefitted by Ball's defence after the opinion of the Court already cited or who can say that they might not have been benefitted, if they had been made parties to the supplemental bill against Miller, if he does indeed represent Ball in any way? or that they were not at great disadvantage, and perhaps

seriously injured, by having no opportunity to contro-
11 vert any of complainants allegations in the supplemental bill, and indeed without having any notice that there was such a bill, until their counsel moved to dismiss the amended bill for want of prosecution, but had to go to trial, in such a condition of the pleadings after their demurrer to the amended bill had been sustained. How can this Court know, that these appellants could not have shown that the allegations of the supplemental Bill could not have been proved, or that they might not have had some defence growing out of the facts, if
12 they could be proved, such as proof that the complainant had proved her claims against the bankrupt, if Ball ever was a bankrupt, or that she had received some payments from him in his life time, if his death could be proved, and his personal representatives had been parties also.

The point, however, if it cannot be sustained, is a very skilful introduction to the next position.

II. That "it is not error that some of the defendants were brought in under the Act of June 1, 1872, al-
13 though that Act was passed after the suit had been begun.

The best mode of introducing this argument was certainly to represent, that parties to be brought in were mere formal parties, from whose rejoinder no injury could come to the appellants.

The general rule in the construction of such statutes is fully sustained in the opening argument in this case, (see p.) Chan. Kent gives the reason why such construction as will apply such statutes to pending
14 suits should not be given, "because," he says, "it is in violation of fundamental principles which is never to be presumed."

As to the cases of Hampton vs. Rouse, 15 Wall, 685, Ins. Co. vs. Plaggio, 16 Wall, 388, and Tel. Co. vs. Eysen, 19 Wall, 424, it is admitted that the reports do not show when the suits begun. Two of these were directly applicable, because they grew out of appeals taken after the passage of the Act. There could be

no more question of the applicability of the provisions of the 11th Section of the Act to appeals after its pas- 15
sage, than there could have been if the judiciary system had been changed, and intermediate Appellate Courts authorized to hear the appeals as has been proposed; and as to the other case, (19 Wall, at 388,) the Act is used in confirmation of a position, as declaratory of the view of the Legislature, not as an enactment.

Nothing could be more unjust and inequitable than to apply the 13th Section of the Act of 1872 to the proceedings in this case. Ball was at the filing of the original bill in the cause a citizen of the State of South 16
Carolina. There is no *proof* yet that he ever ceased to be, so far as these appellants are concerned, or when he ceased to be, for these appellants were not permitted to controvert these allegations of the supplemental bill, and had demurred to their being brought into question under an amended bill, and their demurrer had been sustained and justified. Yet this Court has said that these defendants (appellants) were entitled to Ball's, aid and "that his defence was their defence." This objection that Ball was not made a party to the 17
original bill, was made *in limine*, at the very threshold of the litigation. The complainant persistently refused to make him a party, and now if it be true that Ball removed from South Carolina, became bankrupt and died during the complainant's persistence in her refusal to make him a party, can there be any equity in allowing her to bring in his assignee in bankruptcy alone under an Act passed pending her persistent refusal to make him a party.

This case indeed presents the great danger of such 18
an Act, even if universally applied to all cases commenced since the passing of the Act, unless some provision is made to meet such a condition of things as occurs in this case, that the original defendants have lost the aid of a co-defendant by the wilfulness of the complainant.

ON THE MERITS.

19 I. The preliminary question whether Robertson and Blacklock were in 1863, trustees or executors.

It is said their accounts (p. 6) show that they had then paid the debts, and transferred the bonds to themselves as trustees.

The real question is, had Robertson and Blacklock cast off their character of executors, so that those who afterwards dealt with them knew that they were no longer executors nor to be dealt with as such, but were only to be dealt with as trustees. Looking at that
20 account, is there any warrant for such a deduction? It does not mention the purchasers of Dean Hall or of the negroes. It admits a balance in their hands as *executors*, of more than $2,000 still to be accounted for It does not credit the estate of their testator with any bonds of E. N. Ball, yet charges it with E. N. Ball's bonds paid to themselves, not transferred or assigned in any way, but simply *paid* to themselves. The whole account was made up with a view to charging commissions on the whole amount of sales as if they had re-
21 ceived cash There is no ear mark on any bond thus said to have been paid to them ; neither date, nor time of payment, nor mortgage, nor sureties mentioned ; and one of the bonds being paid in thirds, could not possibly have been set apart to either of the *cestuis que trusts* mentioned.

b. Nor is it possible to say that Blacklock and Robertson had cast off their character as executors, for they accounted as executors for three years after One account was audited June 17, 1858, still showing a
22 balance in their hands after paying sundry debts, still more than $2,000 (see pp. 49, 50 ;) and the next account audited July 18, 1859, still showing a balance in their hands after paying sundry debts, and among these a judgment of several hundred dollars, and purchase of stock as executors. The third annual account audited July 14, 1860, still showing a cash balance and stocks in their hands. (p. 52.) All these three last annual accounts are signed by Blacklock.

c For those three years no accounts of theirs as guardian of the minors or trustees of Mrs. Carson, are 23
filed with Ordinary. Nor were any such accounts ever filed, until within a month of the filing of the original bill in this cause, and then 6th July, 1866, such accounts are filed all together.

d. Blacklock on 11th July, 1860, signed an account as *executor*, (see p 52,) and went away the 10th day of May, 1861; within the year, (see his answer p. 18,) and never returned until 23d October, 1867.

It may be said and said truly, that during the civil war from the last annual account, 14 July, 1860, the Or- 24
dinary had to remove his office, and every thing was in confusion, but why was there no accounting as trustees or guardians for the year ending July 1858, 1859, and 1860, if such accounts were kept.

Robertson, even after the civil war, files an account, audited July 6, 1866, (p. 52,) as *Executor* with the estate of Wm. A. Carson, with a balance to its credit, and precisely as the account stood in 1858, and signs himself executor. He renders another account, audited on the same day with the complainant herself and signs it ex- 25
ecutor (p. 54,) on the same day he files and has an account audited with William and James P. Carson, as Executor of W. A. Carson and trustee, although he signs only as trustee. On the same day an account with the complainant herself, as guardian of her son James as executor of Wm. A. Carson, and signed executor, (p. 58.) Again with her as guardian of her son William on the same day and signed executor. All these accounts are put in evidence by the complainant, and they prove beyond all peradventure, that the character of executor never 26
was put off by either Robertson or Blacklock. Neither Robertson nor Blacklock anywhere in their answers calls himself trustee or says that he had ever put off the character of executor. Even in complainant's bill, she calls upon Robertson and Blacklock for an account of wines and silver plate belonging to the estate of the testator Wm. A. Carson. As to the character in which Robertson and Blacklock stood at the time when the

conveyance was made, and the mortgage satisfied, it
27 seems to be impossible to consider them any thing but executors, and either of them could lawfully satisfy the mortgage, without the joinder of the other, and the absence of Blacklock from the country accounts for his not joining in doing so.

II & III. Robertson's breach of trust and McBurney's complicity.

Surely it ought not be assumed that Robertson's receipt of the money was in itself a breach of trust.

If the obligor was insolvent, and the security he held
28 for it not worth as much as the Confederate money offered for it was at the time, and the security likely to depreciate rather than improve, it would not have been a breach of trust. Robertson did all he could to determine this question, by consulting the ablest counsel and the nearest relative of the parties interested. Both Mr. Petigru and Mr. Robertson, (who was or ought to have been a judge, as he had been the factor of the planters of rice lands all his life) were about as well qualified to decide this question as any men in
29 the Southern country. They decided it to be better to sell under the circumstances. McBurney having ascertained that they approved the sale, looking to the satisfaction of the mortgage, proceeded with the purchase. Certainly McBurney could not have dealt more fairly than he did. He paid a full price. The money he paid for the place was worth more at that time, if converted into Federal currency, than Dean Hall ever would have brought after, and he bought a plantation within a few miles of a beleagured city, the fall of
30 which would expose the purchase to the destruction of the most valuable buildings upon it. In Fritz *vs.* Storer, 22 Wall, at p. 201, Mr. Justice Davis says, "we are brought, therefore, directly to the question whether the payments by Storer to Chilton *were under the circumstances surrounding the parties*, of any validity." This whole transaction must be judged according to their surrounding circumstances. McBurney could look at it no otherwise, and the question of his complicity sets out with these circumstances.

What was McBurney's complicity if Robertson really committed a breach of trust? Nothing else is or can 31
be laid to his charge than that he advanced the money to Ball to enable him to have the mortgage satisfied. The only mortgage he was interested to have satisfied was for $31,000, and he advanced $84,500.

According to the extremest scale this sum in Confederate money was within twelve per cent. of the whole amount due upon the mortgage. But surely equity does not go into extreme calculation to fasten a breach of trust upon a purchaser acting in perfect good faith, and our own Supreme Court, (So. Ca.,) in the 32
case of Meyer *vs.* Mordecai, cited in the opening argument, (pp. 23–25,) scaled Confederate money at three to one, which would make the money advanced more than $28,000, and the whole price paid more than $33,000. Is this such an inadequacy of price as to fasten upon a purchaser, under all the *surrounding circumstances*, the charge of complicity in a breach of trust? For that is the only question here, and this the only evidence upon this question. No case like this has been cited against us. 33

IV. The assignments of William and James Carson to their mother. It is sought to support these upon the consideration of filial affection. But no consideration can be allowed to support the assignment of a right to sue for a *tort*. This suit is founded upon a *breach of trust*. A breach of trust is an equitable *tort*. To allow it to be assigned would be precisely like allowing the assignment of an action of assault and battery, breach of promise of marriage, or *crim. con.* at law. Lord Abinger, in Fraser *vs.* Edmonds, cited in 34
the opening argument, p. 26, declares "it is no where tolerated, as it is against good policy."

EDWARD McCRADY.

IN THE

Supreme Court of the United States.

WILLIAM MCBURNEY and THOMAS R. MCGAHN, *Appellants,* *vs.* CAROLINE CARSON, *Appellee.*	*No.* 780.

BRIEF FOR APPELLE ON APPEAL FROM A DECREE OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

The case is now before this Court for the second time. On the first hearing, the decree in favor of the appellee was reversed for a defect of parties.

Robertson *v.* Carson, 19 Wall., 94.
Record, pp. 63–65.

The cause was again heard in the Court below, and a decree again made for the complainant. From that decree two of the defendants appeal.

FACTS.

The facts, as conceded by the pleadings or proven, were substantially these: William A. Carson, the complainant's husband, died 17th August, 1856, leaving his will, which was proved in the Court of Ordinary of Charleston County. By that will, he appointed Robertson and Blacklock, defendants in the Court below, executors, and after making certain specific bequests, directed the executors to sell the residue of his estate; out of the proceeds of sale, to pay his debts, to divide the balance of such proceeds into three equal parts, to hold one such third part in trust for the complainant during her life, and to hold in trust the other two third parts for his sons William and James, to be paid to them absolutely on their attaining the age of twenty-one years. The remainder in the one-third part to be held in trust for his wife, he bequeathed to his two sons absolutely on their reaching their majority.

Among other property, the testator left a rice plantation, "Dean Hall," which the executors on 2d March, 1857, sold to one Elias N. Ball for $50,000. Of this purchase-money, $35,000 was secured by three bonds, for $9,000 each, and two for $4,000 each, and a mortgage of Dean Hall to the executors securing the bonds. The bonds and mortgage were executed and delivered by Elias N. Ball to the executors on 2d March, 1857.

Amended bill, p. 68; McBurney's answer, p. 75, referring to original answer, p. 11; McGahn's answer, p. 80.

The complainant left South Carolina early in 1861, and became and remained a citizen of New

York, and loyal to the United States during the civil war. Her son William attained his majority in 1863, and had, before the late war, left South Carolina and the so-called Confederate States. James P. Carson did not become of age until after the war. Prior to bringing this suit, both sons assigned to the complainant all their interest in the bonds and mortgage above mentioned.

Bill, pp. 69, 70; answer of McBurney, p. 75, referring to his original answer, p. 15.

The trust accounts of Robertson and Blacklock appear at pages 43–63 of the record. They were filed in the Court of Ordinary of Charleston District from time to time; and show (p. 46) that the administration of the estate was closed, and $31,000 of the bonds of Ball, secured by the mortgage of "Dean Hall," were in 1857 assigned to be held by Robertson and Blacklock as trustees for the complainant and her two sons, one-third for each. These bonds, three of $9,000 each, and one of $4,000, with three other bonds of Ball (as to which no relief is prayed by the amended bill), and with less than $3,000 cash, constituted the entire trust estate for their support.

The executors received $8,929.04 in cash for their services to the estate, as early as June 25, 1857 (p. 47).

In March, 1863, the defendant McBurney, acting for the firm of Hyatt, McBurney & Co., the copartners of which were McBurney and his co-defendants in the Court below, Hasseltine, McGahn and Gillespie, and one Edmund Hyatt, agreed with Elias N. Ball. then the owner of "Dean Hall" under his purchase

from the executors, to buy the plantation for $100,000 in Confederate notes.

Bill, p. 69; answer of McBurney, p. 75, referring to his original answer, p. 12; answer of McGahn, p. 81.

McBurney, so acting for his firm, under this agreement, on 23d April, 1863, paid Elias N. Ball in Confederate treasury notes, a sufficient amount in nominal value to discharge the mortgage held by the executors. Ball did then pay the defendant Robertson out of the Confederate notes paid by McBurney, the nominal amount due on the Dean Hall mortgage; and Robertson, the executor Blacklock taking no part in the transaction, surrendered the bonds and mortgage upon receiving the Confederate notes.

Bill, p. 69; answer of McBurney, p. 75, referring to his original answer, p. 12; answer of McGahn, p. 81.

At the same time, and as part of the same transaction, Ball conveyed the plantation to the defendants McBurney and Gillespie. The bill charges that, at the time of that conveyance, McBurney was aware of the consideration on which the executor Robertson surrendered the bonds and mortgage. This is not only not denied by the answers, but the latter expressly aver (pp. 12, 81) that in the negotiation between Ball and Hyatt, McBurney & Co., one James L. Petigru "urged the completion of the said "treaty and contract, with the express and avowed "purpose of having the bonds and mortgages of the "said Elias N. Ball paid off and satisfied out of the "purchase-money; that, under these circumstances, "this defendant and his co-partners had good reason

"to believe, and did believe, that the said contract "of purchase was fair and equal; * * * that, "*in pursuance of the said contract*, the said Hyatt, "McBurney & Co. * * paid on account of the "purchase-money to the said Elias Nonus Ball more "than eighty thousand dollars, *to enable him to pay* "*off his bonds* to the said executors of the said Wil- "liam A. Carson, and satisfy the mortgage there- "on" (pp. 12, 81).

The defendant McBurney testified (p. 30), that the payment by Hyatt, McBurney & Co., to Ball, was by check upon the Bank of South Carolina; that "if the checks were paid at the teller's stand "they would have been paid in Confederate cur- "rency, as there was no other currency at the time "in existence here. * * * The checks referred "to were drawn by Hyatt, McBurney & Co. simply "for so much money. It was the understanding at "all the banks that payments were to be made in "Confederate currency at the time."

The President of the bank testified (p. 31) that "in '63, and the latter part of '62, the only currency "used by the banks was Confederate Treasury "notes;" that on the 23d April, 1863, a cheque for $84,207.56 was drawn by Hyatt, McBurney & Co., which was paid on the same day by a credit to Rob- ertson, Blacklock & Co. "The payments made by "the bank in April, 1863, were all in Confederate "treasury notes, as there were no other notes in "circulation. It was understood, when the credit "was given in April, '63, and some time previous, "that the credit was in the currency of the day, "viz., Confederate treasury notes." He also testi- fied that the credit in Hyatt, McBurney & Co.'s bank-book was payable in the currency of the day.

The defendants proved (p. 101) that they sold cotton to pay for Dean Hall, "the proceeds of which "were deposited, with their other money, in the "South Carolina Bank, and their cheques were "drawn against the same." What was the amount or value of the cotton did not appear.

The mortgage was not formally satisfied until 21st July, 1866, and then by Robertson alone, upon McBurney's request, in apprehension of this suit. His co-trustee Blacklock repudiated the former transaction, and refused to join in the satisfaction. The complainant was ignorant of the transaction, and repudiated it as soon as she knew of it, as did her sons on arriving at age.

Bill, p. 70; without denial in the answers.

Elias N. Ball, the obligor in the bonds, was adjudged a bankrupt in New Jersey in 1868, and obtained his discharge in bankruptcy on the 27th November, 1868; and the defendant Miller was duly appointed his assignee in bankruptcy. This is alleged in the bill at page 70, and is admitted in McBurney's answer at page 76.

The bill also charged (p. 70), without contradiction, that the trustees Robertson and Blacklock were both insolvent, and had never accounted.

The Confederate notes in their hands were worthless, and the trust estate which they were to protect, and for their protection to which, they had in 1857 been paid $8,929.04, was absolutely swept away by their proceedings in Charleston during the height of the civil war, and the complainant's absence in New York as a loyal citizen.

The appellants again rely upon what they regard as difficulties of practice in the case: insisting that the

proceedings upon the mandate of this Court, still left a fatal defect of parties defendant. It will be important, therefore, upon the question of parties, to examine at the outset the present form of the record.

The complainant's present pleadings are an amended bill against all the present defendants; a replication; and a supplemental bill against the defendant Miller alone.

THE RECORD.

The defendants McBurney and McGahn appeared and answered the amended bill. The defendants Robertson and Blacklock regularly appeared (pp. 17, 19), and were duly served with the amended bill (p. 71). The defendant Gillespie being a citizen of Tennessee (bill, p. 68), an order that he appear was duly ordered to be served on him if practicable. The order was so served (pp. 73, 78). The defendant Hasseltine, being a citizen of Great Britain, was duly served by publication (pp. 68, 79, 90).

The defendant Elias N. Miller was the assignee in bankruptcy of Elias N. Ball; and being a citizen of New Jersey (bill, p. 68), service by publication, and personally if practicable, was ordered (p. 73). Actual personal service was had (p. 73). Upon the supplemental bill a further service was ordered (p. 95); and "due and legal notice" admitted by that defendant, upon such further service. An order *pro confesso* was afterwards entered against him (pp. 95, 96, 99).

It is not urged by the appellants that the services upon Miller, Hasseltine and Gillespie were irregu-

larly effected under the Practice Act of 1872, if that act applied. Their claim is that the act did not aid a complainant whose action was begun before its enactment; although the proceedings were had in 1876, more than four years after the passage of the act.

The complainant amended her bill, in obedience to the suggestions of this Court (pp. 68–71). The appellants separately answered the amended bill (McBurney's answer, pp. 75–77; McGahn's answer, pp. 79–83). The other defendants made default.

The record shows no demurrer, objection or exception to either the amended or supplementary bill.

Nor does the record show, as might be inferred from the appellants' argument, any order or direction passing upon any such demurrer, objection or exception to those bills, or either of them.

There is, indeed, printed, at page 100, a proposed order, submitted to the Court below by the appellants. The order was refused. Its conclusions might properly follow its recitals. It must be presumed, therefore, that the order was refused because its recitals were erroneous. There is certainly nothing in the record to show the recitals to be correct.

ARGUMENT UPON MATTERS OF PRACTICE.

I.

The appellant McBurney alone raises any question as to the joinder of Elias N. Ball or his representatives (p. 76).

The appellant McGahn pleaded no such defence (McGahn's answer, pp. 79–83), and has at no time made the point.

II.

McBurney expressly admits and alleges the bankruptcy and death of Ball (p. 76). The latter's insolvency and non-residence did not appear upon the first hearing of the cause before the Court; and, in deciding that he was a necessary party, this Court said (19 Wall., 105): "The bill does not aver that "he is insolvent, and gives no reason why he should "not or cannot be brought before the Court." It is now submitted, therefore, that upon Ball's insolvency it was unnecessary, and merely proper for abundant caution, to make him or his representative a party.

"If the principal is clearly insolvent, and can be "proved to be so (as by his having taken advantage "of an Act for the relief of insolvent debtors), he "need not be a party to the suit."

1 Dan. Ch. Pr., 270.
1 Story Eq. Jur., §§ 494–496.
Lawson *v.* Wright, 1 Cox, 275.

The rule is also given by Story: "There are, "however, exceptions to the general rule, standing "upon peculiar grounds. Thus, if, in the case of a "joint and several bond, one of the obligors (either a "principal or a surety) is insolvent, he need not be "made a party."

Story's Eq. Pl., § 169.
Young *v.* Lyons, 8 Gill, 162.
Van Cleef *v.* Sickles, 5 Paige, 505.
Williams *v.* Hubbard, 1 Manning, 446.
Angerstein *v.* Clarke, 3 Swanst., 147.
Madox *v.* Jackson, 3 Atk., 405.

III.

The complainant very properly added the new parties by an amended bill, filed by leave of the Court upon payment of costs (p. 67.)

1 Dan. Ch. Pr. (4th Am. Ed.), 295.
Story's Eq. Pl., 8th Ed., § 885.

The appellant's criticism that the amended bill stated facts occurring after the original bill was filed, is merely formal. The amended bill stated all the facts, gave notice to the appellants and all the defendants of the addition of the new parties, and prayed proper process against the latter. Elias N. Ball was not actually made a party to the original bill; and it could not therefore be said that a change in the interests of the *parties* had taken place, the contingency requiring a supplemental bill. Not being brought in at all, no supplemental bill was necessary to state a change in Ball's *status*. His

representative was properly added in the usual way, by amendment.

But even as a formal objection, the point was without merit. An amended bill and a supplemental bill are frequently interchangeable. Upon leave given to file an amended *or* a supplemental bill, the complainant may file *both*.

1 Dan. Ch. Pr. (4th Am. Ed.), 295.
Minn *v.* Stant, 15 Beav., 129.

An order to file an amended bill is sufficiently performed by filing a supplemental bill.

Greenwood *v.* Atkinson, 5 Sim., 419.

An order giving leave to add parties by supplemental bill is satisfied by an amended bill bringing in the parties.

Goodman *v.* Goodman, cited by the Vice-Chancellor in 15 Beav., 130.

The technical rule that an amended bill should state facts in existence when the original bill was filed, no longer exists in the English Chancery.

1 Dan. Ch. Pr. (4th Am. Ed.), 406.

In *Attorney-General* v. *Cambridge Co., L. R.*, 4 *Ch. App.* 71, which was an action to restrain proceedings under a contract, the complainant amended his bill by setting out the rescindment of the contract since filing the original bill. *Held* by the Lords Justices, that where the *plaintiff's* title was originally defective, it cannot be helped by amendment setting up facts after the original bill; but that as the new matter did not concern the plaintiff's title, but rather *defendant's* case, it could be added by amendment.

In *Leyland* v. *Leyland*, 6 *L. T., N. S.*, 342, the Vice-Chancellor permitted a plaintiff in a suit in which her children were parties defendant to introduce an after-born child by amendment.

And Story says that "where from change of interest or any other circumstance, parties become "interested in the subject-matter of the suit after "the bill is filed, they may be made parties to the "bill *by amendment* or by supplemental bill for that "purpose."

Eq. Pl., § 885.

IV.

To obviate the appellant McBurney's persistent objections, the complainant did, however, file a supplemental bill. In this bill she states (p. 96) its object to be to bring in Elias N. Miller, Ball's assignee in bankruptcy, "as a party to her amended bill of complaint against" the other defendants, naming them. The language of the supplemental bill is: "And your oratrix, in her said bill of complaint (*i. e.*, the amended bill), says," &c. And she then states the amended bill, following its language, and averring in the tenth paragraph the subsequently occurring facts, making the supplemental bill proper, and prays process against Miller.

It is difficult to perceive why this does not follow the draughting instructions given by Lord Redesdale and the other authorities cited by the appellants' counsel.

The record does not show what, if any, exception

or objection was taken to the form of the supplemental bill.

And if there were any error in the form of either the amended or supplemental bill, since the parties were brought in and by the pleading advised of all the facts upon which the complainant relied, it is submitted that the Practice Act of 1789 (U. S. R. S., § 954) is an abundant protection to the complainant in this Court:

"No summons, writ, declaration, return, process, "judgment, or other proceedings in civil causes, in "any Court of the United States, shall be abated, "arrested, quashed, or reversed for any defect or "want of form; but such Court shall proceed and "give judgment according as the right of the cause "and matter in law shall appear to it, without re- "garding any such defect, or want of form, except "those which, in cases of demurrer, the party de- "murring specially sets down, together with his "demurrer, as the cause thereof; and such Court "shall amend every such defect and want of form, "other than those which the party demurring so "expresses; and may at any time permit either of "the parties to amend any defect in the process or "pleadings upon such conditions as it shall, in its "discretion and by its rules, prescribe."

V.

The appellant McBurney claims that he should have been made a party to the supplemental bill. It does not appear that this objection was made in the Court below, where, if valid, it might readily

have been rectified. And unless it were especially called to the attention of that Court, it is certainly too late to raise it now. The cause was heard upon both the bills; and very clearly the appellants could have been in no way injured by the omission.

The appellants, however, were not proper parties to the supplemental bill. Their argument confuses the case of a party introduced by supplemental bill, to whom the original defendants are asked to account, or to whom as against them some relief is prayed, with the case of a party brought in that he may protect himself. In the former case the original defendants have a right to be heard, for they may have a peculiar defence against the new party. In the latter case, as in the case at bar, the new defendant is introduced, not to make claim against the original defendants, or to settle any equities between him and them, but that the complainant may not, without the new party being heard, obtain relief against the original defendants, which, *after the decree*, may prejudice the new party. This vital distinction is illustrated by many cases.

Thus, in *Feary* v. *Stephenson*, 1 *Beav.* 42, the original defendants, it was held, should be made parties to the supplemental bill; for one of the several plaintiffs had mortgaged his interest and become insolvent, and his co-plaintiffs filed a supplemental bill against the mortgagee and provisional assignees, without joining the original defendants. The decision was plainly right. The original defendants were to be held liable to the new parties, and should therefore be heard as to any defence they might have against *them*. The Master of the Rolls said (1 Beav. 45): "The case of a de-
"fendant's interest being transferred is very differ-

" ent, for the plaintiff remains the same to the end. " * * Where the interest of one of the defendants " was transferred, the only thing necessary was that " the plaintiff should bring before the Court a pro- " per substitute for such parties."

So, in *Wilkinson* v. *Fowkes*, 9 *Hare*, 192, upon which the appellants greatly rely, the original bill was filed by an heir against the defendant, as a purchaser from his ancestor, to set aside the contract and deeds of purchase, the bill alleging part of the purchase-money to be unpaid. It was plain if the contract were set aside that the personal representative of the ancestor would lose a claim against the purchaser. The personal representative was therefore ordered to be brought in. But the personal representative might, as the result of the litigation, have a claim against the original defendant. That is, there was a matter of controversy between *them*. Therefore it was that the latter should be made a party to a bill bringing the former in. The rule laid down by Lord Redesdale, " that where an event oc- " curs after the filing of the original bill, and there " is a consequent alteration with respect to the par- " ties in general, the defendants to the original suit " must be parties to the supplemental suit," was cited; but the Vice-Chancellor said (9 *Hare*, 197): " What he means by a consequent alteration with " respect to the parties, is any alteration which may " affect the rights or interests of the original defen- " dants as represented on the record. Why is the " cause to be heard as to them, unless their interests " may be affected by the alteration which has taken " place? * * * (p. 199.) They were not required " to be made parties to the supplemental suit in " *Dyson* v. *Morris* or in *Parker* v. *Carter*, because

" *their rights and interests as represented on the record* " *remained the same as before;* and the graft of the " parties into the original suit by the supplemental " suit enabled those rights and interests to be worked " out."

Dyson v. *Morris*, 1 *Hare*, 413, undoubtedly states the rule with accuracy; but the language cited by the appellants seems to be misapprehended by their learned counsel. The Vice-Chancellor there said " that the cases in which the parties to the original " bill were necessary parties to a supplemental, were " those in which the interests of the original defen- " dants required that such new parties should be " before the Court, and that the cases in which the " parties to the original bill were not necessary par- " ties to the supplemental bill, were those in which " the new parties are brought before the Court in " respect of the interest of the plaintiff, or *of the new* " *defendants.*" The original defendant was not therefore brought in, and the Vice-Chancellor added (1 *Hare*, 422): " If the original and supplemental bill " do enable the Court to make the decree to which " the mortgagor has a right, it is obvious that he " had no reason to complain of the record."

So in *Jones* v. *Howells*, 2 *Hare*, 312, where the bill was by one of two next of kin to recover moneys from an executor, the original defendant, the executor, was held a necessary party to a supplemental bill bringing in the other next of kin, because, since the supplemental bill set up a case in favor of the new party against the original defendant, which the latter should have an opportunity to meet.

And in *Parker* v. *Parker*, 9 *Beav.*, 144, where the party brought in by supplemental bill might be

held the party to whom the original defendant must account.

The opinion of this Court put the necessity of Ball's presence expressly upon the ground that if the bill were sustained the whole amount of the mortgage would be rehabilitated against him; that he was entitled to an opportunity to repel the imputations of the bill, and to protect himself if he could; and that upon the covenants of his deeds he might be liable over to his grantee in the event of the mortgage being enforced.

Very certainly, upon the matters contained in the bill, there could be no relief in favor of Ball or his representative against the appellants. The appellants may, indeed, by their defeat in this suit, gain a right against Ball, to be enforced after the decree here, and in another suit, with which the appellee would have no concern. In such a case the original defendant should not be made a party to the supplemental bill.

Ensworth *v.* Lambert, 4 Johns. Ch., 605, citing *Mitf. Ch. Pl.*, 70.
M'Gown *v.* Yerks, 6 Johns. Ch., 450.
Greenwood *v.* Atkinson, 5 Sim., 419.
Bignall *v.* Atkins, 6 Madd., 369.

In *Greenwood* v. *Atkinson*, the original defendant answered that *A*, being bound to reimburse him, the defendant, what he might have to pay the plaintiff, *A* was therefore a necessary party. The plaintiff was then given leave to amend, instead of which he filed a supplemental bill, not making the original defendant a party. *Held* regular. Sir Edward Sugden argued the necessity of the original defendant being joined, very much in substance as

the appellants here do. The Vice-Chancellor said (5 Sim. 422): "It is no objection to the course of "proceeding adopted by the plaintiff that he has "not made Atkinson a party to the supplementary "bill; because it is filed for the purpose of being "heard with the original bill, and of obtaining for "the plaintiff the same relief as is prayed by the "original bill."

In *Ensworth* v. *Lambert*, Ch. Kent permitted a subsequent encumbrancer to be made a party in foreclosure by supplemental bill, without bringing in the original defendant. The new party needed protection, not the original defendant.

And in *Bignall* v. *Atkins*, the Vice-Chancellor said (6 Madd. 370): "The purpose of the supple- "mental bill is to bring new parties before the "Court, who have an interest in the matter of the "original bill; there are no new facts except those "which show the relation of the new parties to the "subject of the suit; that A. became a bankrupt, "and that the new defendants * * are his as- "signees; and that the defendant J. * is the "limited administrator or the testator." And as the original defendant had set up these facts, it was held needless to make him a party to the supplemental bill.

Here McBurney, the only appellant who makes any question of parties as to Ball, had admitted his bankruptcy; and the authority seems directly in point.

The appellants cite *French* v. *Hay*, 22 *Wall.* 238, and *Shaw v. Bill*, 95 *U. S.* 10, as bearing upon this question. Unless the appellee entirely misunderstands those cases, the former simply stated the rule laid down in *Cunningham* v. *Pell*, 6 *Paige*, 655, that new

process was necessary to compel the original defendant to actually answer a supplemental bill. Nothing was held as to the necessity of making the original defendants parties to the supplemental bill. And in *Shaw* v. *Bill*, it was simply held that process should be issued to the new parties; and the Court expressly said (95 U. S. 14): "The supplementary "bill is a mere adjunct to the original bill, and, "where the parties have already been served, no "further subpœna for them is required."

VI.

The proceedings to bring in the defendants Miller, Gillespie and Hasseltine, were under the Practice Act of 1872 (Laws 1872, chapter 255, § 13). The appellants argue that that act did not apply to actions already pending. The language of the act is general, and expressly includes suits already commenced: "That when in any suit in equity *com-* "*menced* in any court," &c.

The appellee does not seek to apply the statute retrospectively. The proceedings sought to be sustained under it, were taken *after*, not *before* its enactment.

As to the new representatives, no action as to them had ever been even commenced; and they therefore could make no criticism. And it is certainly the height of absurdity that the appellants, upon whose request they were brought in, should be deemed in a position to object to the sufficiency of notice to them, when they themselves could not object.

The appellants cite the leading case of *Dash* v. *Van Kleeck*, and other New York decisions following it. But here again the argument proceeds upon a misconception of the question actually decided in the cases, as well as of the question here involved. The rule they illustrate is properly stated by Chancellor Walworth in *Wood* v. *Oakley*, 11 *Paige*, 403, upon which the appellants rely: "It is a general rule in "the construction of statutes that they are not to "have a retrospective effect, *so as to impair previ-* "*ously acquired rights.*" It is also the rule that, unless evidently so intended, a statute affecting remedies shall not be construed to validate consummated proceedings invalidly taken at the time.

But it may be safely said that no case can be cited holding that a practice statute may not, and indeed does not ordinarily affect future proceedings in pending cases. The contrary has been repeatedly adjudged.

Southwick v. *Southwick*, 49 *N. Y.*, 510, was an action between husband and wife, during the pendency and before the trial of which a law was passed in general terms, enabling a husband to testify in such cases. The Court of Appeals of New York held that the law applied to pending suits, the question being a determining one in the case, and said (49 N. Y., 517): "It cannot be successfully "contended as a general rule that an act which ap- "plies only to the forms of procedure and modes of "attaining or defending rights, cannot be availed of "in an action pending when it took effect."

In *Re Lane*, 3 *Met.*, 213, it was held that a general statute, that no discharge should be granted a debtor who, within six months, had given a preference, applied to pending proceedings, so as to pre-

vent an insolvent, who had commenced his proceedings under a law entitling him to a discharge, from obtaining it. *Dash* v. *Van Kleeck* was distinguished. The Court said (3 Met., 215): "It is clear that the "appellant had no vested right to a discharge at "the time of filing his petition. * * * * The "latter statute, therefore, is not to be considered a "restrospective statute disturbing vested rights; "but as altogether prospective in its operations, al- "though it might depend, in some cases, on acts "done before it took effect."

In *Holyoke* v. *Haskins*, 9 *Pick.*, 259, a statute authorizing an heir to come in and prosecute a real action, commenced by his ancestor, was held not retrospective when applied to a case where the action was commenced before, and the ancestor died after the enactment.

In *Rader* v. *Southeasterly*, 7 *Vroom*, 273, a general act affecting costs was held to apply to pending suits.

In *Tilton* v. *Swift*, 40 *Iowa*, 78, it was said upon authority that "retrospective laws, which affect "pending suits, giving a new remedy, modifying an "existing one, or removing an impediment in the "way of legal proceedings, are not unconstitu- "tional."

In *People* v. *Mortimer*, 46 *Cal.*, 114, between an indictment for murder and the trial, a general statute prescribing a certain procedure on such trials went into effect; and it was held to apply to the pending indictment.

It is said in *Cooley's Constitutional Limitations*, upon a multitude of authorities (*p.* 381): "Nor is it "important in any of the cases to which we have "referred, that the legislative act which cures the

"irregularity, defect or want of original authority, "was passed after suit brought, in which such "irregularity or defect became matter of im- "portance. The bringing of suit vests in a party "no right to a particular decision, and his case "must be determined on the law as it stands, not "when the suit was brought, but when the judg- "ment is rendered. * * Even in those States in "which retrospective laws are forbidden, a cause "must be tried under the rules of evidence existing "at the time of the trial, though different from "those in force when the suit was commenced."

See also—

Rich *v.* Flanders, 39 N. H., 304.
Ex parte McCardle, 7 Wall., 508.
Springfield *v.* Hampden, 6 Pick., 500.
Sampeyreae *v.* United States, 7 Pet., 222.
Morse *v.* Goold, 1 Kernan, 281.

The authorities cited by the appellants do not sustain their proposition.

Dash v. *Van Kleeck*, 7 *Johns.*, 477, held that a statute could not take from a man a vested right he had to recover against a sheriff for an escape.

Wood v. *Oakley*, 11 *Paige*, 400. The suit was commenced under a statute making certain parties unnecessary. Pending the suit another law was enacted making those parties necessary. *Held*, that unless the statute read otherwise, the Court would not so apply it as to make an action regularly commenced at the time of process to have become irregularly commenced at the time of the decree.

Bates v. *Stearns*, 23 *Wend.*, 482, held that the New York statute giving a certain effect to a judgment in ejectment did not affect a pending action, in which, of course, the defendant was entitled to

have only that relief taken against him of which he had had notice. "To give an ejectment under its "ancient form a conclusive operation, would be to "contradict the very frame and object of the action."

Sayre v. *Wisner*, 8 *Wend.*, 661, where a new statute of limitations was, for obvious reasons, held not to operate retrospectively. "If the statute of "1830 is to be applied to this case, its effect is to "divest an estate already vested."

People v. *Carnal*, 6 *N. Y.*, 463. A judgment in a criminal action in favor of the accused, final by law when rendered, was held not reviewable under a subsequently passed statute.

Trist v. *Cabenas*, 18 *Abb. Pr.*, 143. A statute requiring a referee's report written sixty days from "the time the action *shall be* finally submitted," held by its express terms to apply to actions thereafter submitted.

Kent v. *Gray*, 53 *N. H.*, 576, was brought by three persons under a peculiar statute, giving a right of action to such single person as should sue alone for the penalty. A statute passed while the suit was pending, allowing parties plaintiffs to be stricken out, held not applicable, under the New Hampshire constitution forbidding retrospective laws; because, since no cause of action accrued until a single person sued alone, neither the three persons nor any one of them had any cause of action; and the Legislature could not enact a cause of action to have existed at the commencemant of the suit which did not exist by law at the time.

Williams v. *Bankhead*, 19 *Wall*, 563. The decree was in 1871; and it was therefore held that the jurisdictional proceedings, had of course before 1872,

could not be sustained under the Practice Act of that year.

And so the observation of Mr. Justice Swayne (19 Wall., 106) was, that the Act of 1872 could not help the jurisdictional proceedings had in this action long before that year.

No one of these cases, therefore, and no case the appellee can discover, holds that any ordinary procedure of a suit is to be conducted by any other laws than those in operation when the procedure is had, whether passed before or after the commencement of the suit.

And very certainly the new defendants might have complained had they been brought in by any other process than such as was lawful at the time the action was begun as to them, which was in 1876.

VII.

This Court has already decided that, although a proper party, Hyatt was not a necessary party; and the complainant might take the risk of omitting him.

Opinion of Mr. Justice Swayne, 19 Wall., 106.

This, it may be presumed, renders argument unnecessary upon the point made by the appellant McGahn as to Hasseltine and Hyatt. It appears from the amended bill (p. 68), and McGahn's answer (p. 80), that those persons, as well as Gillespie and Ball (or his representative), as to both of whom

it did not so appear when this case was here before, were without the jurisdiction. Not being necessary parties, that fact alone made it proper that the cause should proceed to a decree without them.

Act of February 28, 1839; 5 U. S. Statutes at Large, 321.
Equity Rule No. 47.
Commercial Bank *v.* Slocomb, 14 Pet., 60.
Clearwater *v.* Meredith, 21 How., 489.

In the latter case, four persons had made a contract with a citizen of Ohio, and three of the four were citizens of Indiana, and suit was brought againt the three. Non-joinder of the fourth was justified by the Act of 1839; and this Court said (21 How., 493): "It is too clear for controversy that "the Act of 1839 did intend to change the character "of the parties to the suit. The plaintiffs may sue "in the Circuit Court any part of the defendants, "although others may be jointly bound by the con- "tract who are citizens of other States."

This is the well settled rule in the English Chancery.

1 Dan. Ch. Pr. (4th Am. Ed.), 150.

It has been repeatedly so held where the defendant was jointly interested as to the controversy with another person not made a party defendant by reason of being beyond the jurisdiction.

Cowslad *v.* Cely, Finch's Precedents, 83.
Darwent *v.* Walton, 2 Atk., 510.
Erickson *v.* Nesmith, 46 N. H., 371 and authorities on pp. 375-377.
Story's Eq. Pl., § 82.

ARGUMENT UPON THE MERITS.

I.

The question upon the merits of this case lies within a narrow scope.

On the 23d April, 1863, the complainant, with her two sons, had in the hands of Robertson, at Charleston, and Blacklock, then absent, as their trustees, the mortgage for $31,000 upon "Dean Hall." As between them and the complainant, there will be no dispute that they were trustees. The debts of the testator were paid and his estate finally settled, as appeared by the proceedings in the Court of Ordinary in 1857. The duties of Robertson and Blacklock as executors had ceased, and as simple trustees they had held the "Dean Hall" mortgage for six years.

At that time, 1863, the civil war was at its height. The complainant and her son who had reached his majority, remaining loyal at New York, were absolutely shut off from any communication with Charleston, and from any knowledge of what was happening there. Blacklock, one of the trustees, was absent. The stress of war and of absolute commercial stagnation made it a time peculiarly wise to rejoice that one's property was immovable or secured by immovable property, and a time in which a faithful trustee would greatly hesitate to relinquish such security for anything sheerly dependent, *first*, upon the success of the rebellion, and *second*, upon the subsequent pecuniary ability as well as good faith of States utterly impoverished by war.

Then it was that the appellants, wisely perceiving the superior security of a landed investment, agreed to purchase the plantation from Ball. They had learned of the complainant's mortgage, and knew that Robertson and Blacklock held it under the will, either as executors or trustees; and that upon the good faith of the latter, the complainant and her sons were entirely dependent.

In order to obtain an unencumbered title, the appellants themselves procured the mortgage to be paid in Confederate notes. This is not an over statement. The appellants say in their answer, "That in pursuance of the said contract (*i. e.* of pur- "chase from Ball), the said Hyatt, McBurney & "Co. * * paid on account of the purchase- "money, to the said Elias Nonus Ball, more than "eighty thousand dollars, *to enable him* to pay off "his bonds * * and satisfy the mortgage." McBurney himself testified that this payment was in Confederate notes. So it is the appellants' own statement that, to enable the mortgagor to satisfy the mortgage and convey the property to them freed of it, they gave him this large sum in Confederate notes.

The appellants' payment and the discharge of the mortgage were the very same day, 23d April, 1863, the payment of the mortgage being made by a mere transfer of bank credit *in Confederate notes.*

Having thus "enabled" Ball to free the plantation of the mortgage, and knowing thus precisely how the lien was discharged, the appellants at once took their deed; and now in Equity say they have the plantation free of any claim of the complainant.

II.

"Dean Hall" was in 1857 sold to Ball for $50,000, the dollars being United States gold coin. The principal amount now due on the mortgage was at that time $31,000 in that coin.

Observing the standard fixed by the South Carolina Act of 1869 (R. S., Cap. 55, p. 310), and assuming the computation of the appellants' counsel to be correct, their clients in 1863, paying $100,000 in Confederate notes, gave Ball in real value for the plantation $26,666—about half its value six years before.

Laboring under a curious mistake, the appellants' counsel speak of this real value of $26,666 as being paid to the executors, whereas it was only paid to Ball. The latter paid the executor Robertson $31,000 in Confederate notes, which at the same rate ($3.75 of Confederate currency to $1 of United States currency) represented $8,266.66 in real value.

III.

The legal character of Confederate notes is well established. They were not money. They were not legal tender. They were simply a commodity forced into circulation by irresistible force; and to which, in transactions between parties acting in their own right, who chose to regard them as valuable and to act upon the faith of their value, such value will be ascribed as they actually had at the time.

Thorington *v.* Smith, 8 Wall., 1.

Dean Yonnell's Adm'r, ib., 14.
Delmas *v.* Insurance Co., 14 Wall., 661.
Planter's Bank *v.* Union Bank, 16 Wall., 483.
Confederate Note Case, 19 Wall., 548.
Wilmington *v.* King., 91 U. S., 3.
Stewart *v.* Salamon, 94 U. S., 434.
Bissell *v.* Heyward, 96 U. S., 580.

It directly followed, from the reasoning of these cases, that a tender of Confederate notes, or payment in them, to a person not accepting them or recognizing them as a payment, did not discharge a debt not contracted to be paid in them; and when the question arose, it was so decided in this Court.

Horn *v.* Lockhart, 17 Wall., 570.
Fretz *v.* Stover, 22 Wall, 198.
Mitchell *v.* Moore, 95 U. S., 587.

The latter cases establish, however, a further principle, of more importance to the case at bar, and indeed apparently deciding it. A payment of a debt due a person in the Confederate States, as trustee for a resident of a loyal State, could not be made in Confederate notes, although the trustee was actually compelled by the laws of the insurrectionary States to receive such payment in full of the debt.

In *Horn* v. *Lockhart*, an executor in one of those States, invested moneys held in trust for citizens of another State, in Confederate bonds. This investment was in pursuance of an express law of the State; and was, as such, in due form, approved by the probate Court. *Held* that the decree of the latter

Court to that effect was void; and that the executor must again account for and pay the amount invested. And this Court said (17 Wall., 581): "It is urged " * * that the money received by the executor "was in Confederate notes, which, at the time, con- "stituted the currency of the Confederate States. It "does not appear, however, that he was under any com- "pulsion to receive the notes. The estate came into "his hands in November, 1858, and no explanation "is given for his delay in effecting a settlement until "the war became flagrant. And even then, he was "not bound to part with the title to the property in "his hands without receiving an equivalent in good "money, or such, at least, as the legatees were wil- "ling to accept."

In *Fretz* v. *Stover*, one Chilton, residing in an insurrectionary State, and an agent for a Pennsylvanian, held for the latter a bond and mortgage, of which, during the war, he received payment in Confederate notes. *Held* that the bond and mortgage were unpaid; and the mortgage was reimposed upon the land.

In *Mitchell* v. *Moore*, a trustee in Alabama was not permitted to charge his *cestui que trust* with the losses he had sustained by reason of the payments to him during the war, of Confederate notes.

IV.

The question, therefore, is: Could the appellants, knowing the mortgage and that its apparent discharge was procured from an executor or trustee by the payment of no money whatever, but by the

transfer of a commodity then worth not more than one-fourth the amount due, and soon after worthless, take "Dean Hall" free from the mortgage as against the *cestui que trust* having its substantial ownership?

V.

The appellants seeks to escape *Fretz* v. *Stover* by arguing that although the mortgagor could not free his land by payment in Confederate notes, still, a third party, knowing that the lien was discharged in no other way (not to say that he had himself procured it to be discharged in that very way), could take the land free of the mortgage.

That is, the mortgagor, unable directly to commit the fraud, could do it by the simple device of the intervention of a third person. And it is quite immaterial whether the fraud were constructive or actual.

Or, more concisely, it is the appellants' argument, that a vendee, knowing his vendor's want of title, gets a better title than the vendor!

VI.

That a person takes land, or indeed any property, knowing of any agreement affecting it, subject to such agreement, is a salutary doctrine, which the Courts are in nowise inclined to restrict.

Bank *v.* Seton, 1 Pet., 309.

Tulk *v.* Moxhay, 2 Phill., 774.
De Mattos *v.* Gibson, 4 De G. & J., 282.
Trustees *v.* Lynch, 70 N. Y., 440, and authorities at p. 450.
Haven *v.* Emory, 33 N. H., 66.

In *Calais* v. *Van Pelt*, 2 Black, 389, it was said by Mr. Justice Clifford, that "nothing is better settled "than the rule that a purchaser with notice of a "trust stands in no better position than the seller."

Lord Langdale well stated the rule in *Tulk* v. *Moxhay* (2 Phill., 777): "The question is not whether "the covenant runs with the land, but whether a "party shall be permitted to use the land in a man-"ner inconsistent with the contract entered into by "his vendor, and with the notice of which he pur-"chased. That the question does not depend upon "whether the covenant runs with the land is evident "from this, that if there was a mere agreement and "no covenant, the Court would enforce it against a "party purchasing with notice of it; *for if an equity* "*is attached to the property by the owner, no one pur-*"*chasing with notice of that equity can stand in a dif-*"*ferent situation from the party from whom he pur-*"*chased.*"

VII.

That the appellants had notice of the encumbrance upon "Dean Hall," it hardly needs to urge. Their argument that, as they were dealing with an executor, they might presume that the money was

to be applied to the payment of debts, is quite irrelevant. If that were so, then the creditors of Mr. Carson's estate might have complained, instead of his widow and sons. And it has never been contended that it was material that the purchaser should know precisely who were the persons interested in the equity subject to which he takes. But if that were the rule, it is plain that, knowing the will, even if ignorant of the records in the Court of Ordinary in which the will was proved, showing the transfer to the trustees of the mortgage, the appellants had express notice that the complainant and her sons, subject to the payment of debts, were its owners.

Nor will it be seriously contended that the appellants did not know that the only payment of the mortgage was in Confederate notes. They knew that on 23d April, 1863, they paid such notes to Ball as they say in their answers, "to enable him to pay off his bonds to the said executors;" that on that very day Ball did pay off the mortgage, and that on that day there was no other money to pay with (p. 31). This is express notice where constructive notice would have been sufficient.

Sugden on Vendors, 762.
Kennedy *v.* Green, 3 My. and K., 699.
Carr *v.* Hilton, 1 Curtis C. C. R., 390.

In *Calais* v. *Van Pelt, supra*, the rule was stated: "that whatever puts the party upon further inquiry "is sufficient notice in equity."

Lord St. Leonards gave the rule: "Where a per- "son has sufficient information to lead him to a fact "he shall be deemed conusant of it."

In *Kennedy* v. *Green*, the Lord Chancellor said:

"Whatever is notice enough to excite attention, "and put the party upon his guard and call for in- "quiry, is also notice of everything to which it is "afterwards found that such inquiry might have "led, although all was unknown for want of the "investigation."

So in *Lowry* v. *Commercial Bank*, *Taney's C. C. Dec.*, 310, in a case very similar to this, Chief Justice Taney said (pp. 331, 332, 333): "Although it may "not have had actual notice of the contents of the "will, yet, as it was dealing with an executor in his "character as such, the law implies notice; this is "the doctrine in the English Court of Chancery "(4 Mad., 190)." "But * * * the circumstances "then within the knowledge of the bank were "abundantly sufficient to satisfy any reasonable "mind that Samuel Jones was using this stock for his "private purposes. * * * The bank at that "time knew that Talbot Jones had been dead "eight years; that he died rich, and that the time "had long elapsed within which the law of Mary- "land requires an estate to be settled up by an "executor."

VIII.

It is submitted, therefore, if the question be material in this case, that the facts are, within the authorities, abundantly sufficient to charge the appellants also with notice that Robinson and Blacklock held the "Dean Hall" mortgage as trustees. The terms of the will were before the appellants. The records of the Court in which the will was proved

showed the termination of the executors' duties and the transfer of the mortgage to them as trustees. The testator had been dead seven years. And besides, the mortgage was not part of the property left by the testator, and by him directed to be sold. Under that direction "Dean Hall" itself was sold, and a large part of the proceeds devoted to payment of debts. The remainder was invested in the mortgage for *five years*. And very certainly the appellants were bound to presume that an investment of part of the proceeds of the estate for that length of time was not for the temporary purpose of paying debts, but for the permanent uses of the trust of which the will gave the appellants notice.

Blacklock, it is conceded, took no part in the discharge of the mortgage, being in England at the time; and did, as soon as he knew of it, expressly disapprove and disaffirm the action of his co-trustee. The mortgage was not, therefore, legally discharged, and remained a lien upon the plantation which the complainant was entitled in this suit to foreclose.

For in such cases one trustee cannot act. "Where "the administration of the trust is vested in co-trus- "tees, they all form, as it were, but one collective "trustee, and therefore must execute the duties of the "office in their *joint* capacity. * * * * A re- "ceipt for money must, in the absence of a receipt- "clause specially worded, receive the joint authen- "tication of the *whole* body of trustees, and not of "the majority merely, or it will not be valid."

Lewin on Trusts (6th Ed.), 227, 411, and English authorities there cited.

Re Wadsworth, 2 Barb. Ch., 381.

Thatcher *v.* Candee, 4 Abb. Ct. of App. Dec., 387.

Wilbur *v.* Almy, 12 How., 191.
Sloo *v.* Law, 3 Blatch., 459.

"The power of trustees over the subject-matter of "the trust is equal and undivided. They cannot, "like executors, act separately—all must join, both "in receipts and conveyances."

Ridgely *v.* Johnson, 11 Barb., 535.

IX.

It is, however, in nowise essential to the appellee to maintain the character of Robertson and Blacklock as technical trustees.

The two propositions so ingeniously argued by the appellants as to seem to be involved in this case, may be safely conceded, viz.: *first*, that one making a payment to an executor, or purchasing property from him, without notice of an intention on the part of the executor to misapply the money, or in any way violate his trust, is not liable for a subsequent misapplication by the executor; and *second*, that one executor has the power to receipt for and to discharge debts due the estate.

The appellants do not argue, nor could they cite a case, that a person taking assets of an estate from an executor, knowing that in surrendering the assets the executor was acting in breach of his fiduciary duty, could hold the assets against the *cestui que trust*.

Authorities have already been given to the point, that any one taking property knowing that it is impressed with an equity, takes it subject to such

equity. A few cases of executors under this general rule may be profitably considered.

Lowrey v. *Commercial Bank, Taney's C. C. Dec.*, 310, *supra*. Bank stock was bequeathed to an executor to hold in trust for the plaintiff. The executor, desiring to pledge the stock for his own private debt, surrendered the stock certificate standing in his name as trustee to the bank, and took out a new certificate in the name of the pledgee. Chief Justice Taney held that the bank was liable to the *cestui que trust* for the full value of the stock, and thus stated the rule (p. 331): "A party is not "made liable because he pays or advances money "for property of the deceased, but because, by "doing so when he has reasonable ground for be- "lieving that the executor means to misapply it, he "knowingly assists him in committing a breach of "trust."

Field v. *Schieffelin*, 7 *Johns. Ch.*, 150. Chancellor Kent said (p. 157): "But if one concerted with the "executor to obtain the effects at a nominal price, "or at a fraudulent undervalue, or in extinguishing "the private debt of the executor, *or in any other* "*manner, contrary to the duty of the office of executor*, "its purchaser or pawnee will be liable."

Hill v. *Simpson*, 7 *Ves.*, 166. Anticipating the appellant's argument, Sir William Grant said: "But "from that proposition, that a third person is not "bound to look to the trust in every respect, and "for every purpose, it does not follow that, dealing "with the executor for the assets, he may equally "look upon him as absolute owner, and wholly "overlook his character as trustee, when he knows "the executor is applying the assets to a purpose "wholly foreign to his trust."

Garnett v. *Macon*, 6 *Call*, 308. Chief Justice Marshall, laying down with proper limitations the rule which is argued almost needlessly by the appellants, said (p. 362): "Whenever an executor "sells in execution of his trust, the purchaser takes "the property freed from any charge with which "the testator may have burthened it by his will. "But if the sale be a breach of trust, and the pur- "chaser have notice of the fact, he is affected by it. "If the executor sells to a person who knows there "are no debts, or that all the debts are paid, and "that the sale is not a fair execution of the trust, "the purchaser may take the property subject to "the trust (2 P. Wms., 148, 150). So, too, if the "executor sells at such undervalue as to indicate "fraud, or for payment of his own debt."

Collinson v. *Lister*, 7 *De G., M. & G.*, 634. An executor borrowed money from a banking company, of which he was the local agent, for the purpose of making a further advance to a mortgagor of a ship, on the security of which the testator had lent money, on the pretence that such further advance was made to pay off a prior charge, but really to assist the mortgagor, and the security proved ultimately wholly insufficient. *Held* that the company had no claim upon the testator's assets, and that a mortgage of the ship made by the executor to the company to secure their advance, was invalid.

Duncan v. *Jaudon*, 15 *Wall.*, 165. This was a case of trust, decided by this Court upon the same principles, in which two banking houses were held liable for stocks taken from a trustee misapplying them.

McLeod v. *Drummond*, 17 *Ves.*, 152, and the numerous other authorities upon the same question, will be found collected in *Williamson on Executors*, *6th Am.*

Ed., 1002, and *Perry on Trusts*, § 814; and the same rule is stated with abundant authority by Judge Story in his Equity Jurisprudence, §§ 422, 423.

Charlton v. *Durham*, *L. R.*, 4 *Ch. App.*, 438, said by the appellants' counsel to be "identical with this "case in all its essential particulars," might apply if Ball or the appellants had actually paid either of the executors the amount due on the bond in lawful money; and then, without any knowledge or fault of the appellants, the executor had afterwards embezzled the money. For that was the case in *Charlton* v. *Durham*.

X.

These authorities show, what is very clear on principle, that the method in which the executor commits a breach of his trust is immaterial. If a third party take anything from an executor or trustee, whether it be goods or a release of a debt or security, knowing that the executor or trustee (and the form of the trust is of no consequence) in so acting is violating his duty, he becomes instantly liable to the *cestui que trust*.

The appellants knew, or had every reason to know, that the complainant's mortgage was not paid except in Confederate notes. The appellants knew—they are at any rate conclusively presumed to have known—the law. And the law was that those notes made absolutely no payment.

It is, therefore, demonstrably the case of a person taking land charged with a mortgage in form discharged by a trustee, but no part of which, as he

certainly knew, had been paid, and the whole of which would be certainly lost to the *cestui que trust*, except as secured by the land.

How much the appellants' six hundred bales of cotton were worth does not appear. Only thirty-one per cent. of that value, at the best, went to the executor ($31,000 out of $100,000 in Confederate notes); and upon appellants' own statement, the value of the payment to the executor was but a fourth the amount due. It does not alter the equity of the case that the executor was paid in a commodity of temporary value, a fourth of the value he was bound to receive, even if the executor had, as he did not have, a right to take payment in anything but lawful money.

XI.

The rule of equity as to "volunteers" is not properly applied by the appellants. Equity, doubtless, will not interfere to enforce between two persons an unexecuted agreement, given without consideration by one to the other. There is no authority, however, to the point that one of two persons interested in a trust estate may not surrender to the other his interest with the equities attached. The appellants cite simply cases of an effort in equity to enforce a voluntary promise against the party who gave it.

The rule is stated, with the authorities, in 1 Story's Eq. Jur. (12th Ed.), § 433, n.: "This doctrine, how-
"ever, is to be understood with proper qualifications.

"If there be a voluntary contract, *inter vivos*, and "something remains to be done to give it effect; as, "for example, if there be a voluntary contract to "transfer stock, and the stock is not transferred, a "Court of Equity will not enforce the transfer. But "if the stock is actually transferred, then a Court of "Equity will enforce all the rights growing out of "the transfer against anybody."

Ellison *v.* Ellison, 6 Ves., 662.
Colman *v.* Sarrel, 1 Ves. Jr., 50.
Pulvertoft *v.* Pulvertoft, 18 Ves., 91, 93, 99.

This is not the case of the "assignment of a bare "right to call a trustee to account for fraud or "breach of trust." It is the case of two legatees absolutely transferring to a third their fractional interests in the bequeathed property, carrying with it the claim in suit as an incident.

The complainant had her third interest for life without the assignment by her sons. Having jurisdiction of the case, equity will proceed to completely determine it, especially since this Court has decided that, by reason of their assignment to the complainant, her two sons were not necessary parties to the bill.

Opinion of Mr. Justice Swayne, 19 Wall., 104.
And that decision alone disposes of this point.

XII.

Ball, it is not disputed, could not have held the

land free of the complainant's mortgage after his payment in Confederate notes.

The appellants, his vendees, with full notice, are not, it is submitted, in any better position than their vendor. The decree against them should therefore be affirmed with costs.

New York, December, 1878.

EDWARD M. SHEPARD,
CLARENCE A. SEWARD,
Of Counsel for Appellee.

EVENING POST STEAM PRESSES, 208 Broadway, cor. Fulton St., N. Y.

In the Supreme Court of the United States.

WILLIAM MCBURNEY AND THOMAS MCGAHAN,
Appellants,
vs.
CAROLINE CARSON,
Appellee.

Brief of Mr. James Lowndes for Appellee ~~as to the~~ Pleadings.

When this case was here before (19 Wall., 94) it was held that Ball and Gillespie were necessary parties. The bill was also declared to lack precision.

Before the mandate reached the Circuit Court, Ball had been declared a bankrupt, had been discharged and died. E. N. Miller had been appointed his assignee in bankruptcy.

In view of these circumstances the appellee (the complainant below) obtained on the 11th June, 1874, leave to withdraw her replication and to file an amended bill (Trans., p. 67).

In pursuance of this leave she filed on the 13th June, 1874, the bill on p. 68 of the transcript. Besides the original defendants, she made Gillespie, Hasseltine, McGahan and Miller, the assignee of Ball, parties to it. This bill contains in concise form the allegations of the original bill and the additional allegations in respect to Ball.

Copies of the amended bill were served (in pursuance of the order of June 11, 1874) upon all the original defendants. McBurney answered.

McGahan was served with process and answered. In pursuance of an order (*p.* 73) Gillespie was served with process in Tennessee; Miller acknowledged service of the order; and publication was also made of the order (*p.* 78). The answer of the appellant McBurney to the original bill alleged that Hasseltine was in Liverpool. In pursuance of an order, publication of the order for his appearance was made in Liverpool and Charleston (*pp.* 91 and 78).

The bill thus put all the parties on their defense.

The appellant McBurney, in his answer to this bill (*p.* 76) objected to the joinder of E. N. Miller as a party, on the ground that his assignor Ball having become a bankrupt and been discharged and died since the filing of the original bill, Miller, his assignee, must be brought in by a supplemental bill.

The Circuit Court so held (*p.* 95), and the bill on p. 96 was then filed against Miller alone.

I —It is assigned for error that the bill on p. 96 is not a supplemental Bill, and that appellants were not made parties to it.

There are several answers to this:

1. If these objections are well taken against that bill, they are not good against the bill on p. 68 of the transcript, which is a perfect supplemental bill in form, and to which the appellents were made parties.

The order (*p.* 67) was sufficient authority (if anything was needed) to file a supplemental bill.

"The direction that the complainant may make parties by amendment authorizes the filing of a supplemental bill."

√Greenwood *v.* Atkinson, 5 Sim., 419.

In every particular this bill is a supplemental bill; it contains the facts of the original bill; it makes all the proper parties; it alleges all the supplemental facts, and all the parties were duly brought into court.

"Upon a supplemental bill in Chancery, service of subpœna is necessary only as to new parties."

Show *v.* Bell, 95 U. S., p. 14.

The appellant, McBurney, being a party to the original bill, had notice of the application for leave to file the new bill, and was served with a copy of it and answered it.

Process was taken out against all the new parties, and the appellant McGahan answered this bill.

McBurney, in his answer, p. 76, objected to the bill on the ground that Miller was joined.

It is difficult to see how McBurney could make that objection. He had ~~asserted~~ insisted on the joinder of Miller, and it was of no consequence to him how Miller came into the suit. Miller could have made the objection, but he could also have waived any irregularity and submitted to answer.

But the court, at the instance of McBurney, decided that Miller need not answer, and consequently the bill on p. 96 was filed.

None of the other objections to the bill on p. 68 were sustained or are renewed here.

2. But under the rules of practice it was not necessary that a supplemental bill should be brought against any one except Miller, the assignee of Ball; and the bill on p. 96 was a good supplemental bill, although the defendants were not parties to it.

"Where a supplemental bill is merely for the purpose of bringing formal parties before the court as defendants, the parties defendants to the original bill need not in general be made parties to the supplemental."

Dan. Chanc., Vol. II., p. 1533, Ed. 1871.

The original parties need not be made parties to the supplemental bill, "unless, which is frequently the case, the interests of the other defendants may be affected by that decree (*i. e.*, on the supplemental bill)."

Ibid.

"If the decree against the new defendants will affect the interest of the original defendant, the latter should be made a party, *otherwise not.*"

Chase *v.* Searles, 45 N. H., 511.

As no decree was sought here against Miller, under the principle of these cases, the original defendants would seem not to have been necessary parties to the supplemental bill.

Not being parties to this bill, they cannot assign for error that it is not a supplemental bill.

3. If there is error in the proceedings below, it has operated no injury to the appellants.

This court reversed the former decree on the ground that Ball and Gillespie were not made parties to the suit.

When, therefore, Gillespie and Miller, the assignee of Ball, were made parties to the bill on p. 68, the defect which had existed had been cured. Every object for which their joinder was sought was accomplished when they were brought in by that bill. The parties were all before the court, the bill contained all "the particular supplemental matter," and the appellants answered the bill.

McBurney, who had obtained a reversal of the first decree on the ground of the non-joinder of Ball, now objected to the joinder of Miller, his assignee, and insisted upon his being brought in by "supplemental bill" (*p.* 76). Such a bill having been filed, McBurney and McGahan now assign for error their non-joinder with Miller in the latter bill.

If the first bill (*p.* 68.) be laid out of view and it be assumed that the appellants should have been parties to the second bill (*p.* 96), it is clear that the appellants are not prejudiced in any way because they are not parties to it. If the second bill (*p.* 96), had been in their own words and they had been parties to it, the decree would not have been different. They give no hint of any wrong done them in the decree because they were not parties to the second bill or becaues it is not in the language they contend for.

It is not the complainant's fault that the assignee of Ball has not answered, but has let the case go by default. She was only required to make him a party, which she has done. The defendants do not seem to have been anxious for his evidence, for they have made no effort to get it, or to have cared much for relief over against him, for they filed no cross-bill.

But the bill on p. 68 is a complete answer to any complaint on the part of the appellants.

II. It is not error that some of the defendants were brought in under the Act of June 1, 1872, although that act was passed after the suit had been begun.

The language of the 13th section of the act includes cases pending when it was passed.

"When in any suit in Equity, *commenced* in any Court of the United States, &c."

17 S. L., 198.

The same language is used in the analagous provision of the Act of March 3, 1875.

S. L. 18, 470.

The weight of authority is for the rule that statutes relating to procedure control pending suits.

Sedgwick on Statutes, p. 163, note, Ed. 1874.

This Court has applied provisions of the Act of 1872 in the following cases:

Hampton *v.* Rouse, 15 Wall., 685.
Insurance Co. *v.* Piaggio, 16 Wall., 388.
Telegraph Co. *v.* Eysen, 19 Wall., 424.

An examination of the records in these cases shows (what does not appear in the reports) that they were begun before 1872.

In Bleake *v.* Garlington, 92 Wall., 1, begun in May, 1870, the court refused to apply the Act of 1872, on other grounds; but the objection taken here is not referred to by the court in its opinion.

The action of this court when the case was heard below was in effect a decision that the Act of 1872 could be resorted to to bring in the absent defendants. If the act was inapplicable the direction would have been to dismiss the bill.

The expression in the opinion "The 12th section (of the Act of 1872) has no application to the question of parties in this litigation," meant obviously that it did not apply to the proceedings already had, so as to render proper a dismissal of the bill.

On the Merits.

The facts concisely stated, are these:

The complainant's husband, W. A. Carson, died in South Carolina in 1856. His will contains this provision:

"ITEM.—*I order and direct my executors, or such one as may qualify hereon, to sell all the rest of my estate, real and personal, as soon after my decease, and upon such terms, as they or he may deem most judicious.* Until such sale takes place, I order and direct my executors to apply so much of the income of my estate to the maintenance and support of my wife and children, and the education of the latter, as they, or he, in their discretion, may deem fit and proper. From the balance of the income, until the sale, *and from the proceeds of sale, I order and direct my debts to be paid*, and then the residue of the purchase money to be divided into three equal parts, and held by my executors, or my qualified executor, in *trust* for the following purposes," etc., etc. The Trustees were then directed to hold the property in trust for ~~Mary~~ Carson and her two sons.

(Trans, 2; McBurney's Answers, 11–75: McGahan, 80; Stipulation, 101; Appellants' brief, 14.)

He appointed the defendants, Robertson and Blackloch, executors.

In 1857, the executors sold Dean Hall plantation, the testator's property, to E. M. Ball, for $50,000, and for the unpaid part of the purchase money took his bonds and a mortgage of Dean Hall, securing them. These bonds and this mortgage are the securities which are the subject of this suit. On the 22d of June, 1857, the executors had paid the testator's debts and transferred to themselves, as trustees under the will, these bonds and the mortgage (*Trans. p.* 46), in trust for the complainant and her infant sons (*Trans. p.* 2).

In 1863 the defendant, McBurney, agreed with Ball to purchase Dean Hall for $100,000, and furnished to him Confederate Treasury Notes to pay off the bonds and mortgage held by the trustees, and Ball thereupon for these Confederate Treasury Notes got from Robertson, one of the Trustees, the bonds and a satisfaction of the mortgage; and Ball thereupon conveyed Dean Hall to McBurney and Gillespie.

Robertson, in his answer (*p.* 21), admits that he accepted payment of the bonds in Confederate Treasury Notes. Robertson, Ball and McBurney having combined to commit the breach of trust, Robertson's answer is evidence against McBurney. McBurney in his answer virtually admits that his payments were in Confederate Treasury Notes (*p.* 14). The testimony of McBurney and Johnson on pages 30 and 31 show the whole transaction to have been for Confederate Treasury Notes. It is a matter of notoriety that there was no other currency at that time. The fact that McBurney paid nominally twice as much for Dean Hall as Ball had done shows that the purchases was not in the same currency.

McBurney in his answer (*p.* 12), says that he furnished the money (*i. e.*, Confederate Treasury Notes) to Ball to pay the bonds before the conveyance by Ball to McBurney (*p.* 12).

Mrs. Carson was at the time of these transactions at the North (*p.* 33.) Her sons William and James were infants (*pp.* 33 and 56). William is alleged in the bill (*p.* 69) to have been out of the Confederacy during the war, and this is not denied in the answer.

It is not pretended that Mrs. Carson and her sons have in any way ratified the acts of Robertson. Blackloch, the other Trustee, disavows them and says he was in Europe (*p.* 18).

William and James Carson assigned their shares of the trust estate to Mrs. Carson.

Argument.

The complainant's case is, that Robertson and Blackloch held the bonds of Ball and the mortgage of Dean Hall as Trustees; that the surrender of the bonds and the satisfaction of the mortgage by Robertson for Confederate Treasury Notes were breaches of trust; that McBurney not only had notice of this breach of trust, but procured it to be done; and that he took the land subject to the complainant's equity.

I.—It is a preliminary question whether Robertson and Blockloch were, in 1863, Trustees or executors.

Their accounts (*p.* 46) show that they had then paid the debts and transferred the bonds to themselves as Trustees.

Without this act they were Trustees by presumption of law, on the payment of the debts:

Gray *v.* Brown, 1 Rolh. L., 351.
Lewin on Trustees, 246.

If Robertson and Blackloch were trustees, these consequences follow:

1. Robertson alone could not in equity discharge the mortgage.

Lewin on Trusts, 297.
Hill on Trustees, 307, 308.
Magrant *v.* Guignaoid, 3 Strob. Eq., 128.
Lee *v.* Sankey, L. R., 15 Eq., 204.

2. The Trustees had,under the will, no power of sale, the power being attached by the will solely to the office of the executors.

The difference is not of practical importance, for if Robertson and Blackloch were in 1863 executors, what they did was not an exercise of the power of sale, because: First, surrender of a security by the creditor to the debtor, is not a sale; Second, a sale is the transfer of the title for *money*.

But if the transaction had been technically a sale for Confederate Treasury Notes, it would have been as much a breach of trust as acceptance of those notes by way of payment.

Whether they were executors or trustees, their only power was to accept payment in *money*.

II.—The Trustee, Robertson, committed a breach of trust in accepting payment of the bonds in Confederate Treasury Notes.

There have been so many decisions on this point that it is unnecessary to argue it on principle.

Mayer *v.* Mordecai, 1 So. Ca., 383.
Creighton *v.* Pringle, 3 So. Ca., 96.
Dunn *v.* Dunn, 1 So. Ca., 350.
Workman *v.* Balling, 2 So. Ca., 458.
Blackwell *v.* Tucker, 7 So. Ca., 387.
Horn *v.* Lockhart, 17 Wall., 581.
Fretz *v.* Stoker, 22 Wall., 207.

Horn *v.* Lockhart is a case of executors; Fretz *v.* Stoker, of trustees.

It is clear from these authorities that Robertson's discharge of the bond and mortgage was in breach of his trust and void in equity.

III.—McBurney not only had notice that the Trustee had discharged the bonds for Confederate Treasury Notes, in breach of his trust, but furnished Ball with the notes before Ball's conveyance to him, to enable Ball to get the bonds discharged. Having purchased Dean Hall, with full knowledge of the breach of trust and of the complainant's equities, he took Dean Hall subject to those equities.

The general principle of the liability of property in the hands of a purchaser with notice of an equity is too familiar to need argument.

It would indeed be an anomaly in equity jurisprudence to refuse to enforce this principle against a purchaser with notice of this particular equity, while enforcing it in all other cases.

Duncan *v.* Jordan, 15 Wall., 165.

The principal question involved in this suit is *res adjudicata* in this court. In Fretz *v.* Stoker, 22 Wall., 207, it was held that a lien on land was not discharged by the payment to the Trustee of Confederate Treasury Notes.

Under the principle of that decision the bond and mortgage would be valid and subsisting against Ball.

It is perfectly plain that they are equally so as against McBurney, he being a purchaser from Ball with notice. The

complainant's equity would follow the land into into the hands of any number of purchasers, until it reached the hands of a purchaser without notice.

Lewin, 725.
Oliver *v.* Pratt, 3 How., 333.

It is conceded, as argued by the appellants, that if McBurney had found in the hands of Ball the lands and a satisfaction of the mortgage executed by both Trustees, and had no knowledge of any breach of trust on the part of the Trustees, the land would have been discharged. But this case rests on McBurney's knowledge and promotion of two plain breaches of trust, viz.: of the discharge by one Trustee and the acceptance of Confederate money.

The *cestui que trust* is not bound as argued to go first against the Trustee.

Oliver *v.* Pratt, 3 How., 333.

Nor, as argued, is there a question of seeing to the application of purchase money. Mrs. Carson is not seeking to charge McBurney's lands because he paid the Trustee *money* which the latter misapplied, but because McBurney did not pay the Trustee any *money* at all.

IV.—The assignments of William and James Carson to their mother, the complainant, give her the right to bring her bill as to their shares.

Such assignments, evidently made for the benefit and support of the mother by sons, in fulfillment of their natural duty to support her, do not stand ~~in the way~~ of a voluntary assignment, but should be encourged. on the footing

But voluntary assignments will be enforced in equity,

Lewin, 93, 600.

The distinction is between enforcing a voluntary assignment against the assignor at the suit of ~~another~~ assignee, and enforcing it as between assignee and third parties. The cases cited by the appellant all belong to the former class. The case from 21 Wall., 184, has no bearing on the subject;

that from 8 Wall., 162, confirms the appellee's views of the question.

In Prosser *vs.* Edmunds and Hill *vs.* Boyle, no points were made on the consideration, but on the nature of the right assigned. In the former case Lord Abinger distinguished between the assignment of a mere right of action and of an equitable interest; and held that the right to call one to account for a fraud was not assignable. ~~The case of Prosser *vs.* Edmunds cited by appellant (*p.* 26) cannot be found.~~ In Hill *v.* Boyle, the right assigned was to bring suit against the trustees to make them account for profits made out of a trust fund. That, like the assignment in Prosser *vs.* Edmunds, was simply the transfer of a right of action in equity.

The assignment here is of an equitable title, and is not within the principle of these cases.

JAMES LOWNDES,
For Appellee.